

Legislation and Policies (Group D)



Selections from the Government of India, Order 1, June 1990

The National Forest Policy, 1988, envisages people's involvement in the development and protection of forests. The requirements for fuelwood, fodder, and small timber such as house-building material, by the tribals and other villagers living in and near the forests, are to be treated as first charge on forest produce. The Policy Document envisages it as one of the essentials of forest management and envisages that the forest communities should be motivated to identify themselves with the development and protection of forests from which they derive benefits.

(i) The programme should be implemented under an arrangement between the Voluntary Agency/NGO, the village community (beneficiaries), and the State Forest Department.

(ii) No ownership or lease rights over forest land should be given to the beneficiaries or to the Voluntary Agency/NGO. Nor should the forest land be assigned in contravention of the provisions contained in the Forest (Conservation) Act, 1980.

(iii) The beneficiaries should be entitled to a share in usufruct to the extent of and subject to the conditions prescribed by the State Government on their behalf. The Voluntary Agency/NGO should not be entitled to usufructuary benefits.

(iv) Access to forest land and usufructuary benefits should be only for the beneficiaries who are organised into a village institution specifically established for forest regeneration and protection. This could be the *Panchayat* or the Cooperative of the village, with no restriction on membership. It could also be a Village Forest Committee. In no case should any access or tree *pattas* be given to individuals.

(v) The beneficiaries should be given usufruct such as grasses, lops, and tops of branches, and minor forest produce. If they successfully protect the forests, they can be given a portion of the proceeds from the sale of trees when they mature. (The Government of West Bengal has issued orders to give 25% of the sale proceeds to the Village Forest Protection Committees. Similar norms may be adopted by other States.)

-- "Government of India, Order No. 6-21/89-F.P."
Ministry of Environment and Forests.

Community Forestry Policy in Nepal

Nepal's current policy document is the Master Plan for the Forestry Sector approved by the Government in April 1989. The Master Plan lays out the plans, policies, and resource needs for investments to develop the forestry sector in the coming decades (1989 -2010). The focus of the Master Plan is on the basic needs of the Nepalese people and what is required to meet those needs.

The Master Plan institutionalised the Programme Approach to guide the development of forest resources and introduced six major Forestry Sector Programmes to be administered by the Department of Forests.

The largest of these is the Community and Private Forestry Programme with a central policy to

"develop and manage forest resources through the active participation of individuals and communities to meet their basic needs."

The strategy to achieve this is embodied in the statement:

"phased handing over of all accessible hill forests to the communities to the extent that they are able and willing to manage them."

-- **"The Community and Private Forestry Programme in Nepal". Community Forestry Development Division, Department of Forests, Kathmandu, 1991.**

Without question, Nepal has taken an extremely liberal -- some would say radical -- legislative approach to community forestry. Nepal has legally sanctioned the handing over of all biotic resources in a community forest to community identified User Groups to manage and use in perpetuity. The authority for such handing over has been delegated to the District Forest Officer. In contrast, under the Indian legislation (the Forest Conservation Act of 1980 and previous Forest Acts) the Government still retains all resource rights to Reserved and Protected Forests. However, at the administrative level, it has authorised the concessional sharing of products and by virtue of its recent GOI circular has encouraged this sharing to be carried out at a community level.

In both cases, land tenure remains with the Government and the Government retains the right to reclaim the forest resources if misused by the community. Joint or co-management remains in both cases through the instrument of an operational forest management plan which must be approved by the Forest Department prior

to any community harvest. The difference lies in the fact that, in the Nepalese case, 100 per cent of the forest resources are legally transferred as a right, while in the Indian case, the rights to share the forest products partially have not been legislated but administratively granted. (Given the large variation among the States in India, and the differences in forest settlement agreements on different kinds of government forest, there are important exceptions to this generalisation -- such as the *Van Panchayats* of U.P. and the individual and group rights granted in Unclassed Forests of H.P. and elsewhere.)

Ultimately, the tenurial security of communities over forests they co-manage will depend not only on their legislative legitimacy but on the success of this management approach and the degree of political and bureaucratic support it engenders. If community management is seen to be a widespread failure, bureaucratic hurdles can easily be placed in the way of expanding community forests and legislation can even be reversed. However, to the extent that community management can develop widespread grassroots' political support and prove itself to be an effective means for managing national forest resources, even administratively established benefit sharing will provide a high degree of tenurial security. Such success will, in turn, provide the lobbying force to deal with current legislative and policy contradictions and ambiguities -- particularly through the active efforts of NGOs.

Participants in the working group on legislation and policy were particularly concerned with these interrelated issues and addressed the following concerns:

- 1) the need for **political consensus** on matters related to forestry and other natural resources as a **prerequisite to good policy formulation**;
- 2) the dichotomy between forest policy and existing legislation;
- 3) the means for feeding field experiences into operational rules and guidelines;
- 4) the appropriate location of the policing and judicial powers needed to manage community forests;
- 5) the recognition of the role of NGOs in the formulation of policy and legislation; and
- 6) the possibility of women's empowerment through legislative support, and the recognition

of the rights of women versus those of the household.

Realising that democracy is a developing institution in these countries, it was observed that policy and legislative formulation would go through a **wide consultation process with different interest groups and more broad-based involvement of the communities actually involved in the management of the resource.** Currently, the only mandated public review of new policy and legislation occurs when legislation is brought to parliament. Administratively determined policy and management strategies -- such as the Forest Working Plans -- are not currently subject to any public hearing. While NGOs are becoming increasingly effective in serving as the voice of local communities, these communities themselves have little access to policy level decision-making. The participants called for a more open and consultative process.

The participants also called for **clearer specification of the tenurial rights of user communities.** Both rights and responsibilities (obligations) need to be clearly spelled out by law in order to protect both the government and the community and provide a clear contractual basis for effective management.

While most forest areas in India have been legally surveyed and demarcated, it is not so true in Nepal. Given the ambiguities and contradictory claims that most of these lands are subject to, it was observed that such surveys will be necessary to clarify legal status and reduce conflicts. Realising that the process of surveying will entail a long-term effort, it was suggested that an intensive consultation with user groups and neighbouring communities should take place for specifying forest boundaries for specific user communities in the interim period.

Given overlapping tenurial claims on most community forest land, it is likely that this consultative process is the most critical for creating a feasible community forest tenure. Even in carefully surveyed community forest areas of India, changes in legislation and conflicting claims have filled the courts with cases disputing access. Even Arabari, the pilot JFM effort in West Bengal, was the subject of a court adjudicated dispute over benefit-sharing rights. Widespread community consensus over boundaries and rights is, generally, much more

important than legally defined rights; although the specification of such rights can buttress community consensus.

Such community consensus is only possible if decision-making is made at the widest possible level. Participants strongly recommended that **all adults in a participating household should be responsible for vetting all major decisions in a general assembly, and that these should not just be the responsibility of a managing committee.** Experience has shown that decisions confined to a select committee are frequently ineffective unless they have been discussed, debated, and agreed upon by a full assembly of all community forestry users. Since many community forestry programmes currently rely on small committees to carry out decision-making, this conclusion has important implications for the implementation of future efforts.

Community Forest Democracy

There are (perhaps) two levels of democracy, of interest, within forestry:

- representative democracy (as in a parliament), and
- participatory democracy (involving "everybody" in a consultative process)

It seems that legislation related to natural resources needs to be built upon participatory democracy, and that representative democracy is not enough. The reason is that natural resources' management involves all people actively -- at least in a developing country.

-- **Martin Bentz, Hattiban**

Participants also suggested that the overall agreement between the Forest Department and the community forest user group would be a legally binding document, subject to normal legal process and independent arbitration. Within this broad legal framework, the operational functioning rules for the management of the forest should be made by the User Groups -- although the Forest Department can play a positive consultative role in this process.

Participants also discussed and identified **unresolved issues:**

- how can the conflicting legal mandates of different community institutions (i.e., User Group and Village Development Committees in Nepal; *Panchayat* and Forest Protection Committees in India) be resolved?

● should there be different laws or operational guidelines for regions with different resource endowments, levels of commercialisation, and socioeconomic characteristics or is uniformity of law more important?

● if women are the primary users of the forest, should membership of community forest groups be confined to women? are specific legal provisions for protecting the rights of women needed? and

● what is the legal role of NGOs?

In addition, there are a number of associated legislative and policy issues, not addressed by the seminar, which directly relate to the success of these new initiatives in community forestry.

These include legal constraints on harvesting and transport of forest products; subsidised supply of forest products to the public and industry, from both national forests and imported supplies, and its effects on pricing and demand; the role of government leaseholds in forest areas and the rights of surrounding communities; policies encouraging pasture and range development on community lands; urban energy needs and the use of high-value forests to meet fuelwood demands; the implementation of community forestry programmes through a variety of uncoordinated rural development agencies with separate policies; environmental impacts; and the need for flexible experimentation in innovative programmes.

