

Undemocratic and Arbitrary

The Land Takeover Debate

- At the policy and political debate, focused on land acquisition debate
- Land acquisition essentially concerned with transfer of property rights and compensation

*Not with the manner in which land is used,
managed and made part of livelihoods and
production*

Common Lands in India

- NSSO 54th Round (1998) found 15% of country's land area is non-forest common lands; Govt owned forest is 19.4%, so roughly 34% of country's land area in total
- Half of rural households collect livelihood and use materials from common lands
- 74% of those using fuelwood, 63% of those using irrigation collect from common lands

Likely to be an underestimate

Land Takeover of Common Lands

Two types of land takeover:

- *Regulatory takeover*: Through use of forest laws or other instruments that deny rights
 - Forest land area has expanded by 63% since independence
- *Takeover for projects*

*NSSO data estimates common lands declining by
2% per year*

Impacts of Takeover of Common Lands

- Loss of livelihoods dependent on forest and common lands
- Eviction and removal of those who reside in / cultivate 'common' lands
- No rehabilitation or compensation
- Impacts beyond land area taken for project:
 - Pollution / environmental destruction
 - Changes in water table etc.

Legal and Institutional Mechanisms

- Common misconception that common land rights are not recognised in Indian law
- In fact they are recognised but not respected
- Two major legal regimes:
 - Forest law
 - Revenue law

(That is, aside from those in the Northeast and in urban areas)

Forest Law

- Indian Forest Act provides for takeover of land after 'settlement of rights' under IFA or revenue laws
- Process entirely undemocratic, resulting in:
 - Complete focus on individual rights in most areas, and only those with documentary evidence
 - Denial of rights to adivasis, Dalits and other marginalised communities
 - Process not completed at all in most areas (82% of MP's forest blocks; 40% of Orissa's; 60% of national parks and 62% of sanctuaries)

Forest Law – Increased Centralisation

After 1980:

- Forest (Conservation) Act centralises all power in Central Environment Ministry
- Process has no space for public input at all – leave alone informed consultation or consent
- Supreme Court's orders in *T.N. Godavarman* case, esp. 12.12.1996, vest even more power over larger area in forest bureaucracy

Forest Rights Act

- After intense struggle, Forest Rights Act passed in 2006 and notified on Jan 1st 2008
- FRA provides for:
 - Recognition of rights including community and common lands
 - Democratic process for deciding rights
 - Democratic process for managing and protecting forests
- In 2009 MoEF recognises that gram sabha consent required for diversion of forest land – but ignores own order

Revenue Laws

- Revenue laws in many States *do* protect some forms of common lands / rights
 - E.g. Nistar Patrak in MP, Punjab Village Common Lands Act, UP LR and ZA Act etc.
 - Also separate laws for grazing etc.
- Also provide for democratic control in the form of gram sabha (village assembly) and panchayat (village council) powers

Laws for Adivasi / Tribal and Scheduled Areas

- Special laws:
 - Chottanagpur Tenancy Act / SP Tenancy Act etc.
 - Fifth and Sixth Schedules; Art 371A, 371G, etc.
 - Panchayats (Extension to Scheduled Areas) Act, 1996
- Again provide for democratic institutions such as village councils / gram sabhas / etc. to control and regulate land use

Takeover of Revenue Lands

Three main mechanisms:

- Simple illegality – change of records or illegal transfer
- Use of forest law, esp 12.12.1996 order of Supreme Court, to invoke FCA and take over the land (esp in Northeast)
- Use of State govt powers to reclassify land – often in the name of being “wasteland”
 - E.g. Chhattisgarh and Rajasthan biofuel policies

Institutional Dynamics

Clash of two sets of laws:

- One set protects common rights and democratic institutions; others vest power in state machinery
- Communities resisting takeover usually use democratic laws
- However state machinery only implements the autocratic laws
- Administrative procedures do not take into account democratic laws at all (this is also true of the courts)

Historical Reasons

- British colonialists' main interest was increasing revenue and yields of commodities they were interested in
- Common lands and community management posed a problem on both counts
- Hence all colonial land regimes – Permanent Settlement, *ryotwari* settlements, forest laws – shared common feature of eradicating community rights
- Ideological justification in the form of describing them as “wasteland”

Conception of “national interest” and “best use” embedded in system is opposed to community rights

Does it Work?

Consequences of “Development”:

- *No employment generation*: No formal sector employment expansion over the same years of rapid land takeover; sectors seeking land (mining, energy, real estate) have seen net loss of employment
- *Energy sector not serving majority*: Between 1996 and 2006 generation capacity increased by 100,000 MW (almost double) but percentage w/o electricity fell only from 52% to 42%
 - govt estimates only 20,000 MW required to reach electricity to all, but MoEF has cleared ten times more capacity in just the last five years
- *Conservation being harmed*: Rapid rise in diversion of forest land and destruction of forests in violation of law

Suggested Ways Forward

- Key issue therefore is to change the decision making process over land
- Current process is *undemocratic* (entirely controlled by bureaucracy) and *arbitrary* (no planning; whatever user wants, they will get)
- Needs also to reduce space for speculation

Recording of Rights and Powers

- FRA community and individual rights should be recorded and recognised in all areas
- Forest officials should be mandated to respect and comply with gram sabha decisions and plans on forest management
 - Can lead to massive benefits e.g. bamboo in Gadchiroli
- PESA gram sabha powers should be incorporated in relevant state laws and procedures to ensure that community management is respected

Consent and Compensation for Change of Land Use

- Basic step towards a more democratic arrangement: taking consent of the affected communities
- Provision of land and other forms of rehabilitation
- This should be done prior to any land use change over more than a limited area (e.g. agricultural land ceiling) whether land is private, revenue or forest

Making violations a criminal offence

Reducing Space for Speculative Activities

- SEBI regulations should mandate disclosure of the status of all clearances for projects as well as implementation of rights-related legislations in project areas
- RBI regulations should impose higher reserve requirements when granting credit to projects without clearances / without completion of recognition of rights
- Such projects should not receive “infrastructure” or “priority sector” status

In the Long Term

Following recording of rights, and through a *democratic* process, to move towards a system of collective regulation and control over land use

Welfare can occur through many routes, such as collective means and collective production, rather than through land takeover and expropriation