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**CONFLICTS OVER NATURAL  
RESOURCES AND LEGAL  
PLURALISM:  
A CASE STUDY FROM ORISSA**

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**CONFLICTS OVER NATURAL RESOURCES AND  
LEGAL PLURALISM:  
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***Abstract***

*The paper explores the different conceptualisations of 'property rights' over forest and the emerging conflicts from a 'legal pluralism' perspective. It argues that the inability on the part of the State law to accommodate the customary rights of several stakeholders over the same forest resource has resulted in serious conflict among the resource users. Thus, to acknowledge the existence of several sets of law and to work within the framework of legal pluralism may serve as a way to minimize the conflicts and ensure effective and sustainable use and management of natural resource.*

**Introduction**

**Setting the Tone...**

Competing claims over natural resource have been one of the important characteristics of Indian environmentalism<sup>1</sup>. Consequently, conflicts over natural resources, such as forest, water and land, have become a ubiquitous theme in Natural Resource Management (NRM) literature in recent decades (see Sarin, 1996; Ayling and Kelly, 1997; Buckels, 2000). Even the issue of community management of natural resources has not been able to keep itself away from conflicts due to existence of multiple stakeholders who enjoy different rights and claims over the same resource base. The question then is, why conflict occurs over natural resources. This could be owing to the intrinsic characteristics of the resource base as well the varying approaches towards its management with different objectives.

The basic physical nature of natural resource is such that it is embedded in an environment where action by one individual or a group of individuals to capture it may affect the amount of resource available for others. For example, the use of forest by one community reduces the

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availability of it for other communities. The complex and unequal power relations between the wide range of actors in the social space where the natural resource is embedded also forms a reason for conflicts. Actors with greater access to power and government agencies are better able to control the natural resource and influence the policy in their favour (Peet and Watts, 1996; Buckels, 2000). The symbolic meaning and the identity that are attached to natural resources also often lead to conflicts among different users (Buckels, 2000). Forest, land and waterbodies are not just material resources people compete over. They are also part of a particular way of life, which generate certain ethnic identities.

Further, conflicts over natural resources arise also because several stakeholders with opposing interests – local people, commercial enterprises, State agencies and non-governmental organisations – approach natural resource management with different objectives. One commonly found example is that of subsistence security oriented activities for livelihood, which may come in conflict with commercial interests of resource extraction for market and both may conflict with national policies aiming at conservation of the resource.

Even while finding answers to the above questions, we are left with another question as to how to understand the differential claims that different stakeholders put forth to justify their rights over the resource. Such different social, economic and political interests over natural resource and the emerging conflicts out of them are expressed in several ways and find their basis in different systems of normative ordering (Benda-Beckmann and Benda-Beckmann, 1997). Viewed from a legal perspective, several set of laws or normative orders - local folk law, religious law, State law and various forms of self-regulation – are taken into consideration while claiming differential rights over the natural resource. In case of such conflicts based on different social, economic and political interests, different legal systems are inevitably invoked to assert and justify one's own claims. Thus, a monolithic perspective of State law as the dominant one may not serve the purpose of either understanding or resolving the conflicts. In such a context, 'legal pluralism', which acknowledges and tries to explore multiple legal and normative orders that individuals or communities make use of to rationalise and legitimate their competing claim, serves as a better framework.

### **Scope of the Paper**

The paper explores different conceptualisations of rights over forest and the consequent conflicts from a legal pluralism framework. By focusing

on one Indian State, i.e. Orissa, the paper examines a variety of legal statuses attached to the forest and the resulting confusions created in the Joint Forest Management (JFM) programme. The paper discusses the State narratives of JFM and tries to explore the disjunctures and differences between State perspective (dominant State law) and local notions (subordinate customary law). The empirical work for the paper has been carried out in two villages, namely Nagiapasi and Beltikiri, in the Dhenkanal District of Orissa.

Before going deeper into the issue of differential rights over the same forest patch and the resultant conflict between the two villages, and introducing the concept of legal pluralism to the concrete context of conflict, it is instructive first, to engage in a theoretical discussion of legal pluralism; and second, to trace the history of Joint Forest Management in Orissa, and its current legal aspects. Following these two sections, the third section depicts the nature of conflict between the two village communities, chosen for the study, over the issue of use and management of forest through the JFM programme bringing out the lacunae in the State policies towards natural resource use and management. The fourth section engages in the application of legal pluralism to the concrete case of conflict, discussing the issue of changing property rights and mechanisms involved to ensure such rights in the context of forest resources.

### **Legal Pluralism: A Theoretical Understanding**

Acknowledgement of more than one set of legal systems available to take resort to and deconstruction of conventional conceptualisation of law in society, which assigns the State the law-making activity as its sovereign power, becomes the point of departure for an understanding of legal pluralism.<sup>2</sup> In the conventional conceptualisation, law is viewed as deriving from the notion of sovereignty and the State's monopoly of legitimate use of violence. The legitimate authority of the State as the sole lawmaker is based on the normative notions of internal and external sovereignty, which encompasses 'the State's authority to exercise exclusive control over the population that inhabits a territory and the wealth and resources that exist within the territory' (Beitz, 1991; F. von Benda-Beckmann, 1997). However, over the last few decades legal anthropologists have challenged the State's prerogative of law making as an important form of legitimate power and assertion of its sovereignty, emphasising its non-monolithic characteristics.

To begin with, the State is not a monolithic block having just

one set of legal claims. Several institutions of State mechanism often come out with contradictory policies, which are based on different sets of legal regulations and pursue different interests (Benda-Beckmann and Benda-Beckmann, 1997: X).<sup>3</sup> Within the single statutory legal system, different federal, provincial and local laws coexist and a multitude of individuals or institutions are involved in creation and maintenance of such legal orders. Individuals, groups or communities at sub-national level may make, maintain and un-make their own laws of membership and rights over certain resource. These newly created laws may either be re-interpreted versions of State law, or may also be based on different normative orders such as folk, customary and religious legal systems. Further, a single legal repertoire may have different functions in different settings, such as in government offices and community lives, a process, which Franz von Benda-Beckmann and Keebet von Benda-Beckmann (1991) term as 'multi-locality of law'. Spiertz (2000) from his study of water rights in Balinese villages demonstrates how law and normative institutions mean differently in different localities and function as a double-faced medium, which is 'both an instrument of government policy as well as an instrument of local interest management'.

One of the important characteristics of legal pluralism is that instead of viewing law as a static phenomenon, it conceptualises law as a dynamic force, which can be modified and negotiated to suit into situations concerned. In most domains of our day-to-day life and in most social spheres, more than one legal system becomes relevant. As Moore points out, 'between body politic and individual, there are interposed various smaller organised social fields, which are more or less formally organised, to which the individual belongs' (Moore, 1978; cited in Spiertz, 2000: 181). And where these social fields have the power to generate and enforce rules and regulations, they become 'legal fields' (Spiertz, 2000: 181). For legal anthropologists, law is not limited to acts, rules, administrative orders or court decisions of what is right and just, created and enforced by State machinery. Rather, to agree with Moore (1973), law is 'the cognitive and normative orders' generated and maintained in 'social fields'. Wiber (1995) argues that much of the rules that average people experience, such as rules about where they can live, how they get access to water, land and forest, just come from these 'social fields'.

Legal anthropologists analytically distinguish between the existence of law as a 'normative repertoires' derived mostly from State's legitimate authority and the existence of law in the social spheres. Legal repertoires just 'hang in the air', unless and until the 'when' and 'where'

of their actually becoming a social factor is concretised (Spiertz, 2000: 183). It is the social sphere or 'social field' as Moore (1973) phrases it, which makes the abstractions of legal repertoires a set of social facts or concrete laws. This examines the distinction between law as a study of rules and the actual behaviour of practising those rules. Relationships between rules and behaviour can only be studied by looking into real-life situations in different time and space. As Geertz (1983) puts it, law is the distinctive manner of 'imagining the real'.

For example, though water rights are constructed by legal orders, the actualisation of legal rights, Benda-Beckmann and Benda-Beckmann (2000) argue, are effected by social processes. This is because water rights are embedded in social, political and economic relationships. Likewise, Adhikari and Pradhan (2000) describe how in a river basin in Dang, Nepal, with every change in political regimes at the center, a different set of elites emerged who controlled the decision-making institutions that allocate water shares to farmers. Such examples not only indicate the relational nature of law and society and the process of actualisation of normative repertoires in the context of social fields, but also reflect the embeddedness of law in social, economic and political spheres. Meinen-Dick and Pradhan (2001: 15) aptly put in the context of water rights, 'what one holds in hand is not water, but relations, relations which are often hierarchical, fluid and transitory in nature and subject to change'.

Early scholars of legal pluralism conceptualised it as 'the accommodation of a variety of bodies of law, i.e. customary, religious and State law within national legal systems, applicable under specific conditions to different ethnic, religious and racial groups' (see Sawyerr, 1974 in Spiertz, 2000: 179). Such a version of legal pluralism reflects the attempt of colonial governments to legitimise western colonial rules of domination and subordination in the colonies, while at the same time recognising some of the traditional legal practices of indigenous people and creating separate socio-economic and legal spheres for them. However, such accommodation of local traditional legal orders have always remained subservient to dominant State (colonial) law during the period of colonisation, and in the subsequent periods of State formation. The increasing and active presence of State in the domains of social life of people in the name of sovereignty after decolonisation, led the legal anthropologists to come out with a different version of legal pluralism, which moved beyond the mere dichotomy of 'formal State law' versus 'local customary law'. Legal pluralism as is understood today, refers to

coexistence of multiple legal systems pertaining to one and the same domain of social life (F. von Benda-Beckmann, 1983). Instead of focusing on dualistic opposition of State (formal) versus non-State law (customary/local), legal pluralism started focusing on the tensions and contradictions within and between interacting repertoires of law.

Any attempt to study the actual social significance of law should not limit its scope to the State-centric formal legal repertoires, it should rather view State law as a part of the multiplicity of normative repertoires of society. Legal pluralism, thus, should include in its framework all instances where other non-State, officially non-legal institutions create and maintain normative orders. Notwithstanding the universal importance of State law to maintain order in social life, they still fail very often to coincide with the community's perception of rights over natural resource and the ways in which communities manage and appropriate natural resource at the local level. Despite the supreme power of the State mechanism, its capacity to enforce its laws sometimes is constrained by several factors including social forces and local customs. For example, despite State law prohibiting untouchability and adopting policies of positive discrimination, lower caste people are usually excluded from the decision-making process. At the same time, taking resort to local customs alone is also not pragmatic, since all customary laws exist in the broader context of State law. 'Local customary laws rarely exist in isolation of the State legal history, rather are complexly intertwined with it' (Meinzen-Dick and Bruns, 2000: 25 – 26). Thus, natural resource policies, which aim at improving the sustainability of the resource, should be based on all the legal repertoires available in a particular context.

In situations where more than one set of legal order exists, as is the case in most social domains, conflicting claims are legitimised and rationalised by taking resort to any one of the legal repertoires available to people from a set of normative orders. Which of the specific legal orders one chooses to justify his/her claims is not known in advance, since 'which specific repertoire, in which specific case, people will orient themselves to, will mostly be a matter of expediency, of local knowledge, perceived contexts of interaction, and power relations' (Spiertz, 2000: 191). K. von Benda-Beckmann (1984) calls this process of using different normative repertoires in different contexts to support and rationalise one's claim as 'forum shopping'. It is well-known in natural resource management how local power relations affect the process of resource use and management, with those having access to power and government agencies being capable of influencing the State policies in their favour,

besides also being powerful in the local context to claim a greater share from the resource.

To summarise the argument, legal pluralism holds the notion that any social domain is capable of generating and enforcing normative repertoires, and it is thus possible to have several sets of laws. Besides formal State law designed by State legislature and enforced by government agencies, these may include: religious laws, consisting of both written and unwritten religious doctrines and practices; local customary laws expressing people's own values; project or donor laws, including regulations associated with particular developmental projects; organisational law, which are made by user groups; and a range of local norms and practices (Meinzen-Dick and Pradhan, 2002). Such coexistence of multiple legal orders or normative repertoires within a single social domain is called legal pluralism.

### **Joint Forest Management in Orissa: The State Narrative**

Recognition of the traditional rights of local people over forest, though in a limited sense, and the subsequent policy changes of involving them in its management through legal means has been an important phenomenon in the last two decades of the twentieth century. At the national level, the historical ground for Joint Forest Management was prepared by the New Forest Policy, 1988; which emphasised environmental protection and conservation; and meeting the requirements of fuelwood, fodder, minor forest produces and small timber for rural and tribal population; and creating a massive people's movement with involvement of women for achieving these objectives. On June 1, 1990, Government of India adopted a National Joint Forest Management Resolution, which set guidelines for partnership between local communities and State Forest Departments for the protection and management of State-owned forests through Forest Protection Committees. Responding to this, Government of Orissa issued its State JFM Resolution on July 3, 1993,<sup>4</sup> making the beginning of JFM as is understood today, in Orissa.<sup>5</sup>

Joint Forest Management is a concept of developing partnership between forest-dependent communities and the Forest Department of the State government on the basis of mutual trusts and jointly defined duties and responsibilities for forest protection and management. In this model of forest management, people dependent on the forest are to be consulted and their views are to be taken as the basis of management



plan for the forest. The execution of the management plan is to be done through Village Forest Protection Committees, which are constituted by taking two members from each family (one male and female), and maintaining complete transparency in all matters.

The Joint Forest Management Resolution of Government of Orissa entrusts with the Gram Panchayat the duty to convene a general meeting of all adults living in the selected village at the suggestion of the concerned DFO/Range Officer/Forester, where the forest Official/s explain the scheme of Joint Forest Management to the villagers. Based on the response, motivation and willingness of the villagers, and after taking due account of other related factors facilitating the community protection of the forest, the DFO recommends the establishment of a *Vana Samrakshana Samiti* (VSS) or Forest Protection Committee of the village, the institution responsible for protection and management of the forest area. According to the resolution, the VSS should include two adults, including one woman member from every household living in the village, as its members.

Under this new Joint Management Plan, the protection of and management responsibility for the forest patch is totally entrusted to the members of the forest protection committee. It shall be the duty of the members to prevent forest offences and pass on relevant information and intelligence in this regard to the forest department officials. The management activities of the forest are to be carried out by the executive committee of the VSS. Each VSS should have its own executive committee of ten to fifteen members, comprising people's representatives including members of Scheduled Castes and Tribes, women and concerned forest officials. The concerned forester of the locality and the Naib Sarpanch (Vice-President of the Gram Panchayat) would be the convener and chairperson of the executive committee respectively. It is Stated in the Joint Management Plan that usufructs like leaves, fodder, grass, thatch grass, broom grass, thorny fencing materials, brush wood and fallen lops and tops and twigs used as fuelwood shall be available to the members of the VSS free of cost. It shall be the duty of the executive committee of the VSS to ensure equal distribution of all intermediate yields in the shape of small wood poles, firewood etc., as may be obtained in periodical clearance of the forest. However, the timbers and poles as may be obtained from a major harvest or final felling shall be shared equally between the Forest Department and the VSS.

The official version may have several flaws in it. However, for

the present purpose, let me confine the discussion only to the institutional aspects. Institutions play a decisive role in community-based resource management and may be defined as humanly devised systems, consisting of both formal and informal rules, that structure the interaction of its members in social, economic and political arenas (North, 1991; Ostrom, 2001). In the case of community-based resource management, institutions determine who should be allowed to access the resource and who should not; how the resource should be appropriated among the members, how much of the resource unit each member can appropriate from the resource system etc. As has been mentioned earlier, Orissa has had a strong history of community management of forests through traditional institutions, where the rules governing resource use and management had come mostly from local customs and norms, revolving around local social and religious practices and local leadership. These traditional institutions have made and enforced several normative orders, concerning restrictive use of the resource, drawing from different legal repertoires, such as customary, local and religious.<sup>6</sup>

Joint Forest Management in Orissa is a glaring example of how those customary and local laws are violated and State-centric monolithic law was imposed on people concerning forest use and management. The formal institutional arrangements as designed by the JFM policy for the people not only failed to accommodate the existing traditional, customary, religious and local laws, but also ignored them, imposing their notions of law and what is right on the people. Little room was left for the local people to adhere to their own existing laws and normative practices while creating the new institutions as required by the JFM policy.

Such negligence of local customary laws by the State may not in any way be attributed to its ignorance. The responsibility of formation of the institutions for JFM was with the local forest officials who cannot be said to be ignorant about people's customs or traditions, and the normative orders and practices that follow from these. Instead, it reflects the State's attitude of monopolising the law-making authority and imposing its supreme power, which it derives from the very fact of its being sovereign, rejecting the existence of any other parallel institutions of law. It indicates that only the formal institutional arrangements created by the State are 'legal and valid' and all others are 'null and void'; and thus, people, in order to involve themselves in forest protection and management, should form institutions as prescribed in the State resolution. Such a reductionist attitude towards non-State legal institutions has not only affected the customary local laws of the people and their

institutions, but in a significant way has also affected the natural resource itself.<sup>7</sup>

Having initiated the discussion of the disjuncture between State and non-State legal orders in the JFM in Orissa, let me elaborate the discussion by focusing on two specific points. First, the 1993 JFM resolution of government of Orissa categorically States that

*"... only those areas will be selected where the villagers of the adjacent village are willing to offer active cooperation in regeneration and protection of the forest area; and only such villages shall be involved which are situated adjacent to the forest area."*

By assigning the management responsibility only to the adjacent village, the JFM policy ignored the customary rights of non-adjacent villages over the forest. There are several village communities, which do not reside near the forest area but still enjoy property rights over the forest and use the resource for day-to-day requirements.<sup>8</sup> And as per the new legal arrangements these communities do not figure in the management affairs of the forest and, hence, lose their rights based on long-standing customs and norms. Such negligence clearly reflects the varying intentions of the two sets of legal orders. The local customary laws were designed to fulfill the basic requirements of the local population (not necessarily only of the villages adjacent to the forest, but rather the requirements of the whole region) in a structured way so as to ensure the sustainability of the resource, which in turn guaranties a sustainable livelihood to them. On the contrary, government policy of involving local people in forest management had the intention of increased forest cover, discarding the livelihood requirements of people. The government policies failed to understand that the livelihood needs of several villages hover around the same patch of forest, and the local legal (or *para-legal*) arrangements capture this better.

The second issue, which indicates the conflict between State and local legal orders, relates to the question of leadership. The State JFM resolution States that 'each *Vana Samrakshana Samiti* (VSS), the local level institution responsible for forest protection will have an executive committee of which the *Naib Sarpanch* (vice-president) of the Gram Panchayat in which the concerned village falls and the forester will be the chairperson and secretary respectively'. Several issues emerge from this legal Statement.

First, in traditional rural societies each village is an independent social domain or unit having its own leadership structure, which

encompasses the whole social domain of village life; and the customs and normative orders that legitimise the structure.<sup>9</sup> In such a situation any imposed outside leadership structure would not command the desired authority from the members of the village, besides conflicting with the existing leadership of the village. Thus, vice-president of the Gram Panchayat or the forest officials as the leaders of the village institution, which the State narrative of JFM creates, undermines the local customary normative orders, ignoring the local traditional institutions and its legitimate authority.

Second, the Panchayat vice-president, who may not belong to the same village, will not have the same commitment and dedication towards forest protection and requirements of the people as the leader from the concerned village will have. Besides, as the vice president s/he may have to take up the leadership of several Forest Protection Committees that fall within the Panchayat jurisdiction, a condition in which s/he may not be able to do justice to her/his responsibilities. The similar argument also applies to the forester being the secretary of the each Committee falling within her/his jurisdiction.

Having gained a theoretical perspective on legal pluralism, and having discussed the State narrative of the JFM in Orissa and the differences that it creates between State and other sets of legal institutions; let me now move forward to apply the framework of legal pluralism to an empirical case of conflict over forest rights between two villages. This enables us to understand the contradictions and interactions among multiple sets of legal orders through an analysis. The section that follows depicts the case study of violent conflict between two villages over the issue of access and right over the same patch of forest.

### **Conflicts over Forest Rights: The Case Study**

The empirical work for the research was carried out in the Dhenkanal district of Orissa. For the purpose of the empirical work, two villages were chosen, namely *Nagiapasi* and *Beltikiri* from the Dhenkanal Sadar Block of the district. The case of conflict involving the two villages came to my attention, while I was doing my fieldwork in Nagiapasi village for my doctoral thesis. Case study method, supplemented by group discussions and in-depth interviews with key informants have been used to elicit the necessary information regarding the conflict between two villages over the use and management of forest resource. The fieldwork for the case study was carried out in two phases. The first phase of the field work was conducted in the year 2001, during my stay at Nagiapasi

village for two months, i.e. September and October. In the second phase, in October 2002, several rounds of visits were made to Beltikiri village and in-depth interviews and group discussions were carried out with key informants of the village.

Nagiapasi and Beltikiri are adjoining villages at a distance of three kilometres from each other. *Rampa*, a small hamlet of Nagiapasi divides the two villages from each other. Beltikiri is the Panchayat headquarters under which the village Nagiapasi falls. The villages are situated to the east of Dhenkanal town, the district headquarters, at a distance of about 25 kilometres from it. Being the Panchayat headquarters, the village Beltikiri has better civic amenities, having a small dispensary, a nationalised bank and a college offering the intermediate degree. A narrow pukka road, which runs from the district headquarters to the Kapilas temple, connects both the villages with Dhenkanal town.

Beltikiri is a bigger village, with a total of 500 and odd households, compared to Nagiapasi, which has 155 households. The social structure of both the villages is more or less similar, with people from various castes and sub-castes found in Orissa. *Khandayats* (the traditional warrior caste) are the numerically dominant caste in both the villages. Besides, people from other castes such as Brahmin, *Karana* (traditional record keepers), Barber, Milkman, Washerman, etc. also reside in these two villages. Both the villages have a sizeable population of Schedule Castes and Tribes, who derive their livelihood mostly from forest-related activities.

Locationwise, Nagiapasi is the adjacent village to the forest and thus is nearer to the forest than Beltikiri. The villagers of Beltikiri have to pass through Nagiapasi to access the forest. Traditionally the villagers of Nagiapasi and Beltikiri shared the same portion of the Kapilas Reserve Forest, which is adjacent to Nagiapasi village. There is no specific historical record when the two villages started sharing the forest resources. However, one can get an idea of this on the basis of the oral history. An octogenarian in Beltikiri village recalls, "... *during our period we (villagers from both the villages) all used to go to the forest together to cut fuelwood for our common village functions*". It reflects how the socio-religious functions of village life influence the interaction between members of the village and their relationship with the forest. Though there were no firm rules regarding use of the forest between these two villages, yet earlier incidents of conflicts between these two were not reported to the researcher during fieldwork, a factor, which may be attributed to the

non-scarcity of the resource and a consensus on the norms regarding forest resource use between the villages. However, the situation changed with time when the scarcity of the resource was felt with denudation of the forest area. Besides, the shared norms of forest resource use between the two villages, which also became weak with time, could no longer be enforced under the changing circumstances.

In the early 90's when the Government of Orissa came out with policy reforms to involve local people in forest protection and management, the villagers of Nagiapasi wanted to take the responsibility of forest protection and register their Forest Protection Committee with the Forest Department, Government of Orissa; and in this regard gave a written application to the local forester. Catering to their interests, the local forester conveyed a meeting at Nagiapasi village towards the end of 1991, and provisionally formed the Nagiapasi Forest Protection Committee, the subsequent registration of which depended upon satisfactory performance of the Committee. To gain the certificate of 'satisfactory performance' the Nagiapasi people gradually started prohibiting others from entering the forest patch with the justification that they now have legal rights over the forest, which also includes denying the rights of other villagers over the forest, including Beltikiri. Such a situation germinated the potential for a virulent conflict over the issue of having access rights to the forest.

The local conflict resolution mechanisms then started gearing up to combat such a situation. After much negotiation among and between villages, a meeting of several villages was called by an ex-legislator of the area in January 1992. In the meeting, it was decided that all the villages surrounding the Kapilas Reserved Forest of the area should have the right to derive their livelihood from the forest. Accordingly, Forest Protection Committees of the respective villages, which were present in the meeting, were formed and they agreed that none would interfere in the others' protection activities. Intentionally or unintentionally, Beltikiri village was absent at the meeting. No sound reason was found as to why the village was missing from such an important meeting, since both the villages had different opinions regarding this. The Beltikiri people decided that since they were not a part of the meeting, the decisions taken at the meeting did not apply to them; and they thus continued using the forest patch, of which Nagiapasi had taken the responsibility of protecting, as before. Besides they also questioned the legitimacy of the meeting, since it was called by an individual who belonged to a political party, and is thus not impartial. The members of Nagiapasi, however, opposed the rights of the Beltikiri over the forest, which in their opinion then belonged

to them. Anticipating a serious conflict between the villages, the Divisional Forest Officer (DFO), the Collector of the District, the local legislator and some other important personalities of the locality tried to re-negotiate the issue between the two villages and called a meeting in this regard in September 1992. At this meeting, it was decided that both villages would share the responsibility of forest protection and would enjoy the right to access and use the forest together. Nagiapasi would have the right to access the forest four days a week and the remaining three days were reserved for Beltikiri. The DFO officially announced the formation of the Nagiapasi-Beltikiri Forest Protection Committee and the President of the Beltikiri Gram Panchayat was appointed as the President of that Committee.

This decision led to further conflicts between the villages. At the outset, Nagiapasi village did not accept the leadership of the Panchayat President in the Forest Protection Committee, since he was from Beltikiri. Second, they complained that Beltikiri was not properly fulfilling its responsibility of guarding the forest at night, and, on the contrary, appropriating more from the forest in just three days than Nagiapasi.<sup>10</sup> To remove Beltikiri from the Forest Protection Committee, the villagers of Nagiapasi organised themselves to totally deny Beltikiri access to the forest. As a first step, they gathered together in large number and prohibited the Beltikiri people from passing through their village, which has been the usual route for Beltikiri to enter the forest. Seeing the Nagiapasi people in large numbers, the Beltikiri people stopped going to the forest. However, to fulfill the day-to-day livelihood requirements that they needed from the forest, people started taking resort to several other means, such as entering the forest at night or in the absence of any guard to collect forest produces, over which they claimed their legitimate right.

The tension between both the villages remained unheard for a brief period and villagers from Beltikiri continued to retain their rights over the forest through stealing. In between the Orissa government came out with its JFM policy resolution in July 1993 and the Nagiapasi Forest Protection Committee signed the Memorandum of Understanding with the Forest Department taking the responsibility of forest protection. Beltikiri was kept out of the JFM Committee since geographically it was not adjacent to the forest. Besides, in the mean time, Nagiapasi had shown sincere interest and motivation for forest protection, a condition, which was put forth in the beginning when the Forest Protection Committee was formed. Being recognised by the Forest Department as a Forest Protection Committee, Nagiapasi then wanted to enjoy exclusive rights over the forest and started patrolling the forest area to catch thieves from Beltikiri.

In September 1993, Nagiapasi caught some people from Beltikiri, while they were stealing forest produces, and took them into the village. They were harassed in Nagiapasi and were fined Rupees ten each. To take revenge for this humiliation and being fed up with the act of stealing like thieves, Beltikiri organised itself on a mass scale and entered Nagiapasi forcibly with bamboo sticks and other weapons in their hands. They declared inside the village that they would destroy both the Nagiapasi forest and those who would prevent them from entering the forest. Further, they marched towards the forest and cut a few trees from it as a symbolic exhibition of their rights over it.

As reaction to this act by Beltikiri, Nagiapasi prepared itself for a counterattack. Several meetings were held in the village on how to teach a lesson to Beltikiri. A week after this incident, Nagiapasi was determining its strategy for the conflict in a meeting in the village school. The news somehow reached Beltikiri that Nagiapasi was preparing itself for an attack, and immediately around three to four hundred people from Beltikiri rushed to Nagiapasi. This resulted in a violent clash between the two villages in which one person was killed and several others were injured. A case was filed against the people of Beltikiri for their murderous attack.

The consequences of this conflict were far reaching. The Beltikiri had to forego its rights over the forest to Nagiapasi, since by then, Nagiapasi had officially become a JFM village. Further, Beltikiri people also became the target of the Forest Department, since they had destroyed some trees in the process of the conflict. The murder case went to court, but after some days it was sorted out outside the court premises with active involvement of higher police officials, forest officials, and important persons from the locality including the legislator of that area. Such a case of conflict over the forest can be put into the framework of legal pluralism to analyse how conflicting property rights are claimed and negotiated; and how different claims are justified in the process of forum shopping.<sup>11</sup> The following section tries to analyse the case from a theoretical perspective.

## **Discussion and Conclusion**

### **Conflicting Property Rights**

The above case study depicts how the two villages engaged themselves in a serious conflict over the issue of use and management of the forest. In a manner of speaking, such a conflict to decide 'whose forest it is' – is nothing but conflict over property rights over a natural resource base. Property right is one of the most important institutions in natural resource



use and management, which not only decides who will have access to the resource, but also determines the incentive structure that people gain from the resource. Conceptualising property rights within the legal pluralism framework gives us the scope to analyse implications of diverse sets of norms governing natural resources, including the new set of norms evolved in the JFM.

As Benda-Beckmann et al. (1996) argue, 'property right is an 'umbrella concept', which goes beyond the unitary concept of ownership and includes several types of rights to different forms and use of resources'. Property rights over natural resource may be defined as authority to control and undertake particular actions on it, which are recognised as legitimate by a larger collective and are protected through rules (Commons, 1968; Wiber, 1992; Schlager and Ostrom, 1992). Schlager and Ostrom (1992) identify four categories of property rights over natural resource management, such as access and withdrawal, management, exclusion, and alienation. These rights may be divided into two broad categories as use rights and decision-making rights.

Individuals or communities claim different types of rights over natural resources. However, successful utilisation of the rights depends upon acceptance of these claims to right by a larger collectivity, of which the State is only one entity. In every social domain, there exists more than one institution, which accepts and gives legitimacy to property rights. As depicted in the case study, Beltikiri continuously tried to reiterate its customary rights over the forest. It is important to note here that Beltikiri took resort to several bodies of authorities to get its rights legitimised. First, conventionally Beltikiri shared customary rights over the forest gained through tradition and customs. In the years prior to the 1990's Beltikiri and Nagiapasi had equal rights over the forest, and the larger collective of the members of both communities accepted the norms governing the rights. Once such right was opposed by Nagiapasi, it was negotiated and renegotiated twice, first at the level of decision-making bodies at the village and second, at the level of decision-making involving forest and other administrative officials. The State has not been the only legal authority to recognise the rights of Beltikiri. Between the State and traditional customs and norms at the local level, there exist several bodies who design rules to determine who will have rights over the resource. The interference of the ex-legislator of the locality to resolve the conflict serves as an example to prove such a claim. The ex-legislator did not possess any legal authority, nor did he have any formal position in politics during that period. Besides, he did not belong to the villages concerned.

Yet, his authority to create rules and impose them on people outside his community is well-accepted by people, which implies a multiplicity of legal orders existing in the same social domain.

Besides the State and other parallel bodies of law-making, social relationship among communities is a prominent one in determining property rights allocation. Though the State and other institutions are capable of creating laws, yet their actual enforcement to a larger extent depends on the social domain. The property rights over forests in the villages studied have always depended upon the relationship between the two villages. When the social relations were cordial, Beltikiri had no threat to its rights over the forest. It is worth mentioning here that when the conflict took place between some college students of the two villages over the issue of local college election, it got reflected in the domain of property rights over the forest resources of the two villages. The Beltikiri people were denied passage through Nagiapasi, which was their usual route to the forest. It emphasises the fact how law is embedded in social domain and is not merely an enactment of the State mechanisms and as interpreted by the judiciary.

It is not enough to say that both villages fought over property rights, we have to specify over which category of property rights they fought. Conventionally, both the villages were exercising use rights over the same patch of forest. When the issue of management came with the enactment of the Joint Forest Management policies, Nagiapasi refused to share management responsibilities with Beltikiri and thus, rejected its claim to decision-making rights. On the contrary, Beltikiri not only wanted use rights over the forest but also a share in the decision-making rights. When the Nagiapasi-Beltikiri Forest Protection Committee was formed in September 1992 at a meeting organised by some forest and administrative official and other important personalities of the locality, with the Panchayat president as its head, Beltikiri accepted this since the Panchayat President was from their village. But Nagiapasi was not in favour of giving Beltikiri the decision-making right and thus rejected the validity of the Committee and formed its own parallel committee, which subsequently got recognition as a JFM Committee from the State Forest Department, owing to the fact that Nagiapasi was the village adjacent to the forest to be protected.

### **Multiple Strategies of Claiming Rights**

There are several ways in which property rights were claimed by the two villages. On different occasions the two villages used different strategies to retain their property rights. When the conventional rights of Beltikiri,

which they were enjoying based on local conveniences and norms were denied, the people of that village continued to reiterate their claim through 'negotiation', 'stealing' and 'force'. The previous sections have shown how forest rights were negotiated and renegotiated at several fora. It can be pointed out that State legal bodies such as courts and other judicial fora have never been the preferred domains for negotiating and settling disputes over forest rights between the disputing villages. Most of the negotiations were carried on outside the State legal set up by involving persons who had traditional authority or charisma, and who did not possess any legal authority. Even the State officials including those from the Forest Department tried to renegotiate the issue informally without involving the complexity of legal procedures. Such a process indicates the non-monolithic nature of the State, highlighting multiple sets of normative orders within the State mechanism. Negotiation, however, is always used as the first strategy to resolve any dispute. When negotiations between the disputing villages failed and villagers did not arrive at any concrete property rights, the other two methods were used.

Claiming property rights over natural resource through stealing has been a common strategy by several competing communities and individuals (see Pradhan and Pradhan, 1996; Pradhan et al. 1997, 2000). Such a strategy is often used when property rights are denied, negotiations fail and no other legal or licit means are available to claim rights over natural resource. Pradhan and Pradhan (1996) from their study of water rights in Nepal have described how water thieves have been able to secure rights to acquire water and in some cases even to have a say in water allocation and other decision-making processes. However, such a strategy does not always work out to be positive, and sometimes, as the case study shows, people stealing forest produce may be able to use the resource for a temporary period, but are often punished and denied a right over the decision-making process. Though the Beltikiri people were able to acquire forest produce through 'stealing', yet on occasions they have been punished for this and humiliated as well.

The second strategy of asserting rights over the forest used in the present case is the use of force. When Beltikiri failed to gain rights over the forest by the act of 'stealing' and its forest thieves were punished, they decided to forcibly enter Nagiapasi village and its forest. But use of force in dealing with natural resource management is not always a viable strategy. It often leads to further conflict with the State, which happens to be the owner of all the forest and water resources of the country. The conflict between two villages took another dimension, being a conflict between Beltikiri and the Forest Department — a situation from which Nagiapasi wanted to take legal mileage.

Negotiation, even with the mediation of forest and administrative officials as in the present case, has never been the only option, and has not been successful always in resolving conflicts over natural resources and establishing firm property rights. When social relations between the negotiating parties are good and are based on mutually accepted norms, negotiation may prove to be a viable option to decide about property rights and resolve disputes. In situations of adverse relations people usually take resort to other means as discussed above to secure property rights. However, this need not lead us to think that social relations between the actors are the only criterion to decide which strategy should be taken to retain property rights and solve disputes over them. The existing power relation in the locality and availability of outside support, both legal and extra-legal often determines the strategies to be taken. Beltikiri being a

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### **Multiple Normative Repertoires**

In situations of conflict over natural resource, different claimants adopt different normative repertoires to rationalise their claim and justify their rights. In the present case, both Nagiapasi and Beltikiri took resort to different sets of laws in the process of 'forum shopping'. Initially when the dispute took place, Nagiapasi villagers claimed that as they had formed a Forest Protection Committee and taken the responsibility of protecting the forest, they only should enjoy property rights over the forest. Later, when they gained provisional recognition by the local forest officials, their argument became stronger and they claimed legal right over the forest. However, Beltikiri people were not prepared to accept such a claim from Nagiapasi. They tried to retain their status on the ground that they had been using the forest for long and cited instances of age-old customs and norms, which allow both villages to use the same forest for livelihood purposes. Further, they rejected the legal status of Nagiapasi's Forest Protection Committee on the ground that it had not been signed by the DFO and Nagiapasi could obtain provisional recognition from the local forest guard by illegal means.

Second, when the DFO and District Collector tried to negotiate the issue and set up a single Committee for both the villages with the Panchayat president, who was from Beltikiri village, as its President;

Beltikiri welcomed the decision. It now claimed to have a legal status, since the committee was formed in the presence of the DFO. But Nagiapasi rejected this claim on the ground that the meeting was not official and the DFO's presence in it was unofficial.

Third, the presence of State laws and introduction of the JFM made the situation more critical. Nagiapasi's claim of monopoly over the forest gained momentum with the JFM law, which stated that only those villages adjacent to the forest shall be entitled to form the Forest Protection Committees. In front of the 'dominant State law' created through the JFM resolution, Beltikiri could not hold its claim to property rights over forest, which was backed by conventions, negotiations through local authorities and customary norms. Though one of the disputing villages adhered to the State law and the other to the local, yet the present conflict cannot be reduced to that of a conflict between 'dominant state law' and 'subordinate customary laws'. It was observed that the non-State is as non-monolithic and diverse as is the State. There was not a single version of local customary normative orders. Rather several versions of such laws are created and rejected depending upon the situation.

### **Conclusion**

In this paper, it is argued that multiple normative orders exist and operate through multiple authorities as applicable to a single social domain. The State-centric monolithic perspective of law fails to acknowledge this in many situations; and even on some occasions that it acknowledges this, it tries to reject it or dominate it with its supreme police power. Such a failure poses serious threats to community-based resource management, discarding traditional and customary rights of people, which they have enjoyed for long.

Understanding the multiple sets of laws through the framework of legal pluralism has a major contribution to make in policy-making in the natural resource management sector. However, only acknowledging multiple sets of laws and invoking plural legal repertoires may not always serve the purpose, since it increases the potential for further conflicts between several sets of laws and cannot address the question of which of the repertoires should be privileged in a given context. In such a situation of existence of multiple sets of laws, the State law should incorporate the customary laws and other sources of rights, and accord them legal recognition for sustainable use and management of natural resources.

Non-acceptance of such plurality of laws and multiple sources

of claiming rights while designing policies for JFM can have severe consequences as discussed in the case study. The restrictive definition of a village community adopted by JFM policies often creates confusion in its proper implementation, since the notion of adjacent location of a village is a relative one. There may be several such examples throughout India, where villages enjoying customary rights over the forest would have to forego such rights because of their distance from the forest to be regenerated as per the norms of Joint Forest Management.

## Notes

<sup>1</sup> 'Indian environmentalism' or 'environmentalism of the poor', as it is popularly known among environmental historians, (cf. Guha and Martinez-Alier, 1998; Guha, 2000) may be understood as the resistance from the ecosystem people – who use the natural resource base to sustain their livelihood and derive most of their material needs from it – to the process of resource capture by the omnivores – the urban and rural elites who use the resource base for commercial purposes and try to enhance their capital by making use of the natural resource – as visible from the protest against big dams by villagers to be displaced by them, and the struggle of forest dependent communities against the diversification of forest and grazing land for commercial purposes. Environmental conflicts in India are inevitably continuing struggles over the process of production and extraction. These are not conflicts concerning how the resource should be used and what technology should be used for its extraction; rather these are struggles over who captures the resource to use it as a base of production, and at whose cost it is captured. The history of forest conflicts in our country, for instance, has been a constant struggle between the State or agencies of the State, which intends to consider forest as a source of increasing revenue for profit maximisation; and local communities, who depends upon it for their subsistence (Gadgil and Guha, 1995; Guha, 1995). For a detailed analysis of Indian environmentalism and the conflicts inherent in it see, Guha and Martinez-Alier (1998), Guha (1989, 2000), Gadgil and Guha (1995), Baviskar (1995).

<sup>2</sup> For a detailed understanding of 'Legal Pluralism' see, Griffith, 1986; Merry, 1988; Spiertz, 1995, 2000; Benda-Beckmann, 1992, 1995; Benda-Beckmann et al., 1996, 1997; Bruns and Meinzen-Dick, 2000.

<sup>3</sup> Sengupta (2000) from his study of water rights on system tanks in Bihar, India demonstrates how different government officials have divergent legal versions regarding farmers' right over tank water. Similarly, Van de Giesen and Andreini's (1997) analysis of the contradictory and confrontational attitudes of the government agencies towards wetlands in Rwanda and Zimbabwe is an illustrative case in point.

<sup>4</sup> For the government orders concerning people's involvement in forest management in Orissa including the 1993 resolution of JFM, see Ori-Forest, 1997.

<sup>5</sup> However, community involvement in the use and management of forest resources through their traditional institutions and locally devised rules and laws has a long history in Orissa mostly deriving from customs and norms. For details on community forestry in Orissa see Mahapatra (1999), Sundar et al., (1996). Even the legal process to involve people in forest

management started much earlier in mid 1980's with the enactment of the 'Orissa Village Forest Rules, 1985' giving the rights over village forests to the local communities. The Orissa Forest Act, 1972 distinguishes three different categories of forests based on their legal status, i.e. Reserve Forest, Protected Forest and Village Forest. Property rights over the forestland determine the difference between different types of forests. While in the case of Reserved Forest, the Forest Department enjoys property rights over the forestland, in Protected Forests, the management rights and responsibilities of the forest is conferred on Forest Department, whereas the property rights on land remains with the Revenue Department. The village forests are supposed to meet the livelihood requirements of rural communities and hence its management responsibilities are entrusted to the village communities.

<sup>6</sup> Religious and customary laws play a significant role in forest management in Orissa, since most of the temples in villages have their own forestlands. The use and management of these temple forests revolve around the requirements of the temple and rules designed by the temple authorities. Besides, certain tree species and specific areas in the forest are also worshipped and people neither cut those trees nor disturb that patch of forest. During the course of fieldwork the present author has come across several instances of people having specific norms regarding harvesting and cutting of trees. In the initial months, when the fruit-bearing trees bear fruits, people do not even cut their branches for fuelwood purposes.

<sup>7</sup> Scholars supporting the community initiatives for local resource management (e.g. Ostrom, 1990; Bromley et al, 1992; Berkes, 1991) put forth the claim that the policies emanating from central governments generally give local people little rights over the resources upon which they depend for their livelihood. The conditions, which generate in the absence of any rights over the resource, create an incentive structure that encourages local people to degrade the natural resource and discourages them from maintaining rules or institutions at local level to regulate their use (Guha, 1989; Gibson and Marks, 1995).

<sup>8</sup> This issue has been dealt with in great detail in the following sections drawing insights from the empirical data.

<sup>9</sup> This does not mean that village social structure is a homogeneous one, in which the leader is situated at the centre and all others revolve around him/her. Village political domain is as diverse and conflicting as the national or provincial political domain. Each leader in a village politics has his/her opposition in the village. However, both the leader and his/her opponents belong to one social sphere and derive their power and dominance from the same social structure.



<sup>10</sup> Another incident took place around this time, which has significant bearing upon the existing adverse relation between the villages. A conflict took place between some of the youths of the both villages for a completely different cause, relating to elections in the local college. The conflict turned into physical assault, with Nagiapasi students being beaten up by Beltikiri students. More importantly the youths who were beaten up were from the higher caste (*Karana*) of the village and relatives of the village head. As protest against this, Nagiapasi people stopped going to that village and also decided not to allow people from Beltikiri to pass through their village. It took no time for the conflict in the college to rush into the arena of the forest. As a result the conflicts over the forest issue took a more serious turn.

<sup>11</sup> For an understanding of the process of 'forum shopping' see K. von Benda-Beckmann (1984). Also refer to the theoretical discussion on 'legal pluralism' in the beginning of the paper.

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