RIGHTS, PROPERTY AND JUSTICE IN COMMUNITY MANAGEMENT OF FORESTS

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CERTIFICATE

This is to certify that the Dissertation entitlled **Rights, Property and justice in Community Management of forests** submitted by **Archana Rai** in the partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of this University is her original work and has not been submitted in parts or full for any other degree or diploma in any other University.

We recommend that it may be placed before the examiners for evaluation.

Professor Kuldeep Mathur
(Supervisor)

Dr. Sudha Pai
(Chairperson)

Dedicated to my father, with the promise that his memories, hopes and aspirations will take me far...

CONTENTS

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(ARCHANA RAI)

INTRODUCTION

The enlightenment era, which is also known as the 'age of reason' was marked by iconoclastic tendencies. These tendencies called for a reversal of old order based on irrationality, superstitions and sacredness of nature. The new world order that enlightenment aspired for was to be modern and progressive, premised on scientific belief and rationality. The new world order further implied that it is the human beings who create the world and the world exists for human beings. Thus one of the core principles of enlightenment was innate superiority of human beings. In short the promise was for a perfect culture that would have answers for all the miseries that surround the world.

The new world order in social and political arena was symbolised by the 'Social Contract' - a contract that proclaimed liberation from all the tyrannies by giving all human beings right to equality, liberty and property. The moot question that arises whether this social contract a real 'just social contract' - on critical analysis the picture that emerges is quite at odds with the traditional view of social contract - social contract comes out as a double edged contract. Though it had the potential of being just an essence as it was premised on egalitarian notions, but when applied under different and varying conditions it was distorted and manipulated. The end result of it was that the social contract became the opposite of what it symbolized. It became

a ploy for the minority who already had liberty, equality and property to deny justice to the majority of people.

The effect of the social contract for natives, colonies and indigenous people were deleterious and the claims of liberty, equality, justice and property were a sham and hallow claims. The result of it was dominance, inequality, injustice and captivity. The irony of social contract lay in the fact that the bundle of rights promised to the white men were at the cost of indigenous populations. Snatched and usurped by indigenous people. Thus the social contract symbolized on unjust and an a -social contract.

The idea of progress and modernism were actualized by the industrial revolution, scientific revolution and liberalism, there triumvirates were the new goods. For whom the natives and nature had to be subjugated ,slaves had to be made and forest have to be ravaged. The exigencies and necessities of enlightenment demanded creation of dichotomy between man and nature, objectification of nature and in the end fragmentation of communities as liberalism was premised on innate superiority of individuals not communities .The impact of above mentioned development were disastrous for forest based communities, because it was not only nature that was desacralised, it was also human beings with the in nature who were dehumanized , as firstly they were isolated from there ambient ,with the which they defined themselves This development exacted its cost by tearing them apart and secondly the philosophy of enlightenment and liberalism relied on an anthropocentric as well as atomized view of individuals,

liberalism created conditions conducive for atomizing human nature. Individuals becomes the sole repository of all values, community as a social entity, which is crucial for forestbased communities was denied any space in political arena. Moreover community as an entity comes in conflict with the kernel values of individualism ,because community is essentially viewed as imposing restriction on liberty and equality of individuals. The project of science which in the whole enlightenment period, was one of providing sanctity to the processes of destroying ,dominating and manipulating forests Provided the intellectual authorization to industrial revolution and liberalism. But ironically the same processes after destroying the forest started looking for ways in which forests could be saved as the whole survival of human beings was at stake ,due to the violence of enlightenment. Here also the reason was not due to the realization that forest based communities had been destablised and dehumanized. The other reason for regenerating forest was due to demands of 'timber', which was required to maintain the vitality and sustenance of industrial revolution and late development. Moreover forests have to be maintained as wilderness zones for asethetic reasons. These developments gave birth to the conservationist ideology. Conservationist ideology was thus formed in an atmosphere that put premium on universal generalized notions, Positivistic belief and innate superiority of sciences. The principles of conservationist ideology were seen to the valid for all people in all items and all places. Forest based communities in this paradigm were seen as a negative externality, that has to

be excluded at all costs. The objectification of nature remained intact and the dichotomy between human and nature become more deeply entrenched in the conception of forests as wilderness zones, turning forest based communities into squatters. The impact of positivism and objectivism is evident in the assumption that nature and people do not interact, implicit within it is also the exclusion of social solution to the environmental problems. The result of this exclusionary conservationist paradigm, according to a World Bank Study is that, it leads to not only material impoverishment but also psychological stress on communities including craving for lost home syndrome, anxiety for future, feeling off impotence associated with inability to protect one's one home and finally dispossession and loss of community (World Development Report 1992, cited in Ghimere and Pimbert; 1997).

It has been mentioned earlier their community as a social entity was thoroughly discredited by liberal-individualism as it did not fit within the agenda of destruction and dehumanisation and more importantly community meant linkages which had no place in individualist paradigm that had its edifice in atomisation. The realisation that community could also be an active sphere for conservation of forests, though has arrived late is now gaining momentum. This ascendancy of community and bringing it back in the agenda of creativity is in parts due to assertion of new social movements and partly due to the theoritisation of communitarians, who emphasize the importance of community and maintain that individual entity is embedded

and within its ambit individual entity is shaped. Emphasizing the value of community Leslie Green says that "Community cannot be over ruled as some of our most urgent needs are not merely to do with individuated goods such as personal autonomy, liberty and exclusive property, but also with collective goods"(Green; 1995:269).

The role of community as an active agent is widely accepted in ecological discourse and especially in community based conservation of forests. The importance assigned to community is due to the fact that it has the potential of playing pioneer role in conservation of forest. The ecological communitarians perceive community as a core value within an ecologically just society. "Commonly the hope and the belief is that ecological societies will be small decentralized communities with decision making procedures based on direct rather than representative democracy (Seward:1993;63). Ecological communitarianism can offer a viable solution for the maintenance of community as well as forest because essentially both are fighting against the some tyrannies of industrialization, modernization and superiority of science and technology. Further overlaps exist between community and ecology as both reject the individualistic conception of self, universalism of the liberal belief and "Particularly the idea of rationally conceived principles of justice can be exported to any society"(Keeny;1993:65). Individuals are seen as embodied agents who have certain form of life. For ecological communitarians this embededness is double. "Socially as well as ecologically embedded (Benton; 1993:103).

"Communities are rooted in their immediate environment, with their cultural elaboration taking place through interaction with environment (Krishnan; 2001:46-47).

The study seeks to analyse the viability of community-based conservation of forests with in the paradigm of ecological communitarian approach. It tries to deal with the crucial issues of rights, property and justice within community based conservation of forests. These issues become important, as safeguards are needed to make communities strong enough to resist outside influences and not to dismantle their symbiotic and sustainable relationship with forest. The question of right becomes pertinent while dealing with cultures of communities that are linked to their self identity and conservationist practices. It has to be kept in mind that cultures cannot be isolated from conservationist practices as the communities views the relationships with lands as central to cultural identity and collective well being. The entire relationship between the spiritual life of indigenous people and mother earth and the land has many deep social implications.

The relationship with forest is not one to be propertised it was the basis of these cultures and communities, the propertising of forest land has led to the loss of distinctiveness of community based conservation of forests. In the present realm if community has to be accorded primacy in forestry the shifts has to be form individual to group rights and in certain instances mechanisms has to he initiated for protecting rights of community. Right to self-preservation and an economically beneficial arrangement has to be

reached. The study further ties to put forward a conception of group rights through which communities can shape and preserve their collective identity and their culture that revolves around forest and its sustainable use. The issue of rights cannot be delinked with the issues of justice as rights essentially guarantee certain kind of freedom and liberty. The majoritarian conception of justice that prevails fails to take into account the rights of forest based communities. The role of state as a guarantor of justice in this context is one of neutrality, which has led to majoritarian values getting imprinted in justice. The majoritarian view of justice is diametrically opposed to the conception of justice that forest based communities have.

The study is therefore an attempt to put forth a conception of justice, property and rights in relation to forest based communities that's are in harmony with the community, but it tries to avoid injustices related with in community practices, as communities can itself become perpetrators of justice. For this reason the study altogether does not reject the universalistic notion of individual right and put forwards a nuaunced approach that gives group right, but individual are also given basic inviolable rights that are right to life, liberty and equality. The question of future does not merely mean end of human nature domination but also human -human domination. Both have to be realized simultaneously and for this reason environmental justice, with in the rubric of which community based conservation of forest comes has to take into account both kinds of justice. The question of internal minorities becomes important as community itself can be the site of oppression "It

ignores the coercive possibility arising from the connection between ecological goals and communitarian politics" (Keaning: 1993; 69) . Therefore the study tries its best to take a watered down approach of communitarianism which has a place for individual right, individual self actualization and personal autonomy.

To elucidate and provide coherence to community based conservation of forest, references had been made of forest bared communities in India and their management practices.

Conservation is inherently political in nature as it involves making of decisions regarding the use of scarce natural resources with alternatives ends and therefore political questions become crucial ,for whose benefits are resources to be conserved? By whose authority? in whom should authority over natural resources to vested to ensure that the are prudently managed ? The study attempts to answer these questions and every chapter raises these questions in some ways.

The first chapter briefly deals with the politics of enlightenment, industrial revolution and liberalism, it thus to show how these processes have led to devaluation of nature and forest based communities ,for this modernism as a discourse has been examined which makes it apparent how the relationship between individuals and that of human kind with nature has changed from one characterized by sustainability and harmony to that a domination . The chapter further draws on the alternative available for a

creation of society that celebrates essential linkages between human beings and forests in this chapter.

The second chapter ' Forest as common property resources ' studies changes in land structure due to the impact of alien conception property rights and the result of it on forest based communities. It dwells on the question of what was the impact of peropertising forest resources? And what has been its fall out? With this end in view ,it makes a study of various types of property regime, it then raises the question of which type of property regime suites forest based communities.? And also takes into account the visions and perception of forest based communities. It further analyses the issue of how can links between forest based communities and land be maintained within their cultural ambit? What are the institutional mechanisms that will provide for stability for the chosen property regime?

The third chapter analyses in detail the basic philosophy of individual rights and its implications on forest based communities? What factors have led to their ascendancy in the present times? Why group rights and community specific rights have suffered a set back? The second part of the chapter puts forward the ecological communitarian approach to the whole question of individual rights and group and community rights and brings up the issue of how community rights can provide a basis of halting usurpation of rights. The third part of the chapter takes up some concrete issue of encroachment of rights that have led to the denial of identity in the case of forest based communities through colonization, imperialism, nation building

and, at present through Globalization. The issues of rights in bioprospecting and intellectual property rights, and self-determination have been discussed. It further raises the issue of what bundles of rights will lead to a community getting an independent space? In this chapter, the framework of analysis is that of communitarianism.

The forth chapter is the concluding chapter that perceives justice as a holistic concept. It takes into its ambit not only rights and property but also alternative ways of development that are conducive to communities. This chapter starts with the assumption that conservation is an issue of distributive justice but it goes beyond to encompass social and cultural justice. It shows that why theories of distributive justice fail to answer the call for community based justice. The chapter establishes that justice in the forest based communities is not only about human- nature domination but also about human-human domination. With this premise it calls for justice in development and it entails justice within environmental movement itself. The whole chapter revolves around the question of what justice will mean in the context of indigenous knowledge? How can the issue of intra- group justice within a community can be solved? The last section focusses its attention on various mechanisms that will lead to a truly just society.

The study is based on secondary sources in which I have taken from the framework of communitarianism, political ecology, liberal theories, postmodernism and critical theories.

CHAPTER - I

CHALLENGES TO THE TRADITIONAL SYSTEMS OF COMMUNITY MANAGEMENT OF FORESTS

"These walking lies had nothing left to say to their Brothers; they only echoed from Paris, from London, from Amsterdam, we would utter the words, 'Parthenon' 'Brotherhood'! and some where in Africa and Asia lips would open –... 'thenon'!... therhood' it was the golden age."

Jean Paul Sartre
in the Preface of – "The wretched of the earth"

Development as a word has come to colonise the Third World. It is perceived to be a panacea that has remedy and solution to all the problems and miseries that surround the human life. Development in today's world has all the trappings that herald the birth of a new God. In order to understand why development has become the 'Messiah', what development means and how it has come to hold sway over the minds of millions, it has to be situated in a broader historical perspective that makes it clear what were the causes and events that had made development an existential necessity in today's world, what it entails for the future and what is its specific ideology?

The ideology of development is rooted in the epistemology of modernism and progress, and its manifestations - industrial revolution, scientific revolution and liberal capitalism, which in the 20th century culminated in western development paradigm. Modernism was premised on the belief that there is nothing superior to individual and it is the individual

who makes the world. This optimism and innate faith in man's superiority promised everything to everybody. Release from poverty through conquering and taming nature, material abundance through superior scientific knowledge, participation and forms of government that went beyond elites, peace, justice and dignity of human beings - in short "The promise was for a superior culture that will be the effect of Progress." (Norgaard David; 1994:5). The result and consequences of modernity and progress are apparent today in forms of de-sacrilized nature and hierarchical power relations.

Modernism and progress challenged the conventional wisdom that human beings are part of a cosmology, it gave birth to the belief that everything in the world has to be conquered. In this plan science, industrial revolution and capitalist economy provided the philosophical, technological and economic justification. As they represented diverse components of the same phenomena, which though diverse, have a symbiotic relationship with each other and complement one another in the denouement of mastery of nature and people. "Modernism as a discourse is based on dualism of nature and culture and as such the denial of essentially social character of nature (Braun & Castro, cited in Redclift; 1998).

SCIENCE AND NATURE:

The first task of science in the whole project was to provide legitimacy to the belief that nature exists as separate and discrete entity that

can be conquered. This was important to industrial revolution as timber and wood provided the input required to mobilise the engine of industrial revolution and capitalist economy. Holistic vision of nature and man in nature was the biggest hurdle to the crossed. Bacon was the first to mention that scientific analysis could give man mastery over nature. Further legitimacy to the project was accorded by Newton as physics was premised on the assumption that whole represents nothing more than sum of the parts and that the identity of the whole is constituted by parts. Therefore, by analysing parts separately, whole could be understood. The implicit assumption inherent in this was that nature could be stripped, conquered, manipulated, quarried and dismantled. Descartes later saw technology as the process that defines and constitutes man's relationship with nature. The consequence was that it led to exploitation of nature on an unprecedented scale, scientific methods assumed supremacy over indigenous methods and nature became a realm of imperialistic and expansionist ideology.

Science hinges on the assumption that values represent a negative externality, anything to be true has to be stripped and divested of values, the result of this belief system is the creation of fact and value dichotomy since truth is only that which is objective and has the stamp of scientificity. Nature becomes an objective fact where values are unwanted - objectification of nature in the ultimate analysis leads to commodification, monetisation of nature. The claim of science to be value free evokes strong sense of skepticism as science itself works with its hidden and implicit biases. It is

13

based on prioritising what aspect of nature has to be studied, which in turn is determined by the value and relevance it holds at a particular time. It selects particular context which is itself determined by value and marketing potential. But the biggest value that science exhibits is its proclamation in universalism. This universality of science becomes a western value that undermines other indigenous bases of knowledge and relegates them to a status of 'unscientific'. Science is a socially constructed discipline that has a strong underpinning of western bourgeois rationality (Shiva; 1998) it denies alternative modes of knowing as knowledge. Another facet of science that adversely affects nature has been its philosophy of reductionism that has its roots in Newtonian assertion of whole being the sum total of its parts. Reductionism finds its expression in fragmentation of knowledge, specialisation and division of labour that have become so cherished in our present society. The concept of specialization is inherently exclusionary as is takes only those as true knower, who have specialized in certain discipline. It also denies those people who shape and in turn get shaped by their ambient as knowledgeable. Knowledge becomes the sole domain of experts and expert departments like forestry, agriculture, genetic engineering etc.. The other consequence of reductionism is that it legitimizes a single universal truth and single solution to all problems. Conservation science works within the boundary set up by the reductionist paradigm of breaking up knowledge in fragments. The experts, ignoring the local specifications, make universal laws and thus traditional knowledge becomes redundant.

Ecosystems are perceived as isolated phenomenon untouched by human hands. What it jettisons is the fact that ecosystem is not only a biological category but also a social category which is characterized by complex interplay of social forces. "Because many biologists are intent on analyzing so called organism and natural systems, they often ignore that they are dealing and observing relationships between organisms and environment that have been influenced by human kind over thousands of years... even when they do not ignore human influence, such natural system biologists typically treat human presence as a purely negetaive phenomena (Nathen et al, cited in Ghai; 1997). Valuelessness of conservationist science becomes questionable when it becomes apparent that scientists are working within the broad parameters of world view and power structure and the assumption that there is only one universal ideology of conservation, applicable to all times and spaces. This inherent 'value' of reductionism in science, especially conservation science, has led to marginalisation of indigenous` people and their loss of knowledge system, resource management systems, alternative ways of knowing. Science's obsession with universality and uniformity is exemplified in the concept of 'Super Trees' where all trees are reduced to clones of each other. Trees are itself redefined as it becomes an instrument of monetary value. "The trees in the forest should be free of knots.. they should be straight, trees growing in the forest will be useful trees, for each tree ask if it is worth the space it grows in. Aspen, Hemlock are weed trees that should be eliminated. For harvesting, it is desirable that a stand be all of

the some variety and age. Nothing should grow on forest floor, not seedling, grass, not shrubbery" (cited in Shiva; 1988:92). The consequence of it has been loss of space for indigenous people because these kinds of artificial and monocultural plantation lack the utility of fulfilling basic needs of tribals. Secondly, Science prides itself for being neutral and this neutrality is premised on experimentation. Experimentation is seen as the 'value' that leads science to the realm of superiority and, thus provides it an unquestionable authority, on closer analysis. Experimentation desacrilises nature as it is devoid of historicity and uniqueness of creation, which according to Goodin   are the necessary value of nature. The history that surrounds nature is ignored. According to Vandana Shiva the structure of violence are inbuilt with science. This violence manifests itself at three levels, it leads to violence against tribals, peasants, and women because they are divested as knowing subjects and their knowledge is devalued. It leads to violence against nature as it is stripped of its capacity to regenerate and finally it leads to violence against alternative modes of 'knowing' (Shiva; 1998). The claim of science that it is the saviour of poor stands stripped of its veil because on deeper analysis it becomes apparent that science itself is the main cause of marginalisation and dispossession of the poorest of poor. This is done by attacking and quarrying the ecosystem in which they define their lives. As an imperialistic agenda, science has wrecked havoc on the lives of millions "the central concept of

modern science is fused with resources utilization (C.V. Shesadri, cited in Alvaroz; 1992:67).

SCIENCE AND SOCIAL SCIENCES:

Social sciences have become highly influenced with value neutrality, objectivism and universality. This impact has led to searching of methods that will purge values from the disciplines. The result of this mode of thinking has been ascendancy of positivism that gives importance to scientific tests and statistical methods. The implicit assumption here is that after objectifying nature science goes on to objectify human beings as the final aim is objectification of nature and objectification of certain categories of people so that universal methods can be implanted on them. The impact of reductionism led to 'Searchlight' effect that focuses on one aspect of knowledge obscuring the other side, its other effects are specialization, super specialisation, division of labour and rise of individualistic philosophy at the cost of societal view. Division of labour further reduces indigenous people as providers of raw material ignoring their role as creators. These development in social science has came to be characterised as 'Rationalism' which has led to the final disjuncture between human and nature and belief in universality of human laws that human nature is essentially the same in all times and places. From hence forth indigenous and alternative systems were further denigrated and finally it put the idea firmly that human goals are discernible. Human beings itself become mechanical and scientific. "The

disenchantment of external nature was achieved by despiritualising human beings' internal nature" (Merchant; 1996:4).

LIBERAL CAPITALISM AND NATURE:

Liberalism emerged as a corollary of modernism, it dovetailed perfectly with the scientific ideology of the period because it was nurtured by the same philosophers who had overarching faith in the superiority of science and its power to make men the master of universe. "The philosophy of utilitarianism and liberalism became the philosophy of capitalism, with science and technology providing the means of commodification of nature and industrialism on world scale" (Carley and Christie; 1992:65). The claims of science that nature can be dominated and desacrilised found their parallel in the notion of superiority of individuals. It redefined the relationship of individuals to the society. Individual henceforth became self sufficient, atomised and rational creature of which society is created. (This was the impact of Newtonian legacy of whole being a sum total of all parts and that whole can be studied by analysing part). The other effect of this legacy was mechanisation of human society. Liberalism posits individual as the sole repository of social, economic and cultural values, in this capacity they are held as discrete tradable assets and are separate atomistic individual (Norgaard David; 1994) This in consequence led to increased emphasis on exchange relations. The view of liberal philosophers like John Locke proved to be extremely conducive for such development as the right to choose and the right to property were elevated to new heights. An implicit sanction was

provided for desacrilising nature and pushing the forest back as to get out of State of Nature, natural forest had to be converted into private property. "The man who gathered wild fruit has a prima facie right to it". Earth has been given to the humans for their support and comfort of their being became the truism of the time and the times to come. Inherent in this belief is the notion that earth itself is sterile. It is through labour that man endows it with fertility. From this time onward, nature was placed with the profanes and there developed an "ideological animosity towards forest as jungle are now perceived to be places that have lapsed into State of Nature" (Rangrajan; 1996:32).

INDUSTRIAL REVOLUTION AND NATURE:

The foreground of sale of Nature has been prepared by science by destroying and creating a disjuncture between nature and humans, liberalism provided it with an ethical justification and industrial revolution gave it a concrete shape. Armed with scientific and philosophical justification for conquering nature and communities of human beings residing in forest the white man launched the journey of industrialization that will take him to new horizons, new places to be captured and colonised for raw materials were needed to keep the ship of progress and modernism moving. Industrialism as an economic system was rooted within the tenets of liberalism. These tenets were all encompassing phenomena and were interconnected and interdependent. Free competition makes production and exchange most advantageous to all and finally that natural resource

exploitation is the condition for prosperity growth. The expansionist agenda of industrial revolution led to conquering lands by dispossessing communities of their traditional lands that in ultimate analysis led to enclosing the common forests for production process. Monetisation of subsistence forest based economies was done by intrusion of market and later by converting forest based communities into labour. The consequence of it was destruction of a way of life. "Enclosures leads to a new ecological order"(Illich; 1993:60). Further "it transforms the environment into a resource for national or global production" (Whose Common Future; 1993:60).

Science on its part provided industrial revolution with a greater impetus in its plan of turning everything into commodity, it provided sanctity to industrial revolution by virtue of the legitimacy and power it commanded and as the sole repository of universal truth. The veneer of science gave industrial revolution authorized sanction for rampage and exploitation of nature as well as savages, through out the world unparalled in the human history. Market in nexus with science went on converting forests into timber, ships, railway tracks that were necessary for profit maximisation and capital accumulation.

The undaunting belief in modernism and its subsets – scientific revolution, industrial revolution and liberalism led to a total break from the past. The energy and optimism it unleashed provided grounds for the belief that life, nature and human beings can be moulded into universality as the

laws governing them were universal in nature. This innate faith in universality and order led to a justification of a system that was predicated on repression and extermination of indigenous people. As a socially and politically constructed system, it denied the possibility that there are other ways of knowing, organising and interacting with environment. Thus what we can conclude is that the philosophy of natural disembeddedness was the specific creation of dominance, superiority and hierarchy. What it entailed was the creation of 'First World', 'Second' and 'Third World' and, finally the lowest of the low-'the Fourth World' of human beings who lived and defined their lives within a cultural and social web of nature. According to Claude Alvaroz ' The first victim of science were forest as in forest scientific imagination tries to invent its own version of nature, recreation of artificial nature thus becomes a necessity for commercial purposes. Science finds multispecies forest as anarchic, scientific management is needed for rectification". (Alvaroz; 1992`

DEVELOPMENT:

By the end of 19th Century, progress and modernism with its component parts had gained paramount importance in defining choices of people and people themselves. The institutionalisation and legitimization of progress in the 20th century culminated in the concept of economic development. "The term progress referred to the belief in what was possible, while development referred to the conscious process of making it happen" (Carley and Christie; 1992:37). Thus Development or Development

paradigm, which has an omniscience presence in today's world, was the result of historical and economic process that were shaping the world from the time of Enlightenment. The idea of progress is too deeply entrenched in development, that development is interpreted as a means of progress that is infinite. Development is not only an infinite process but also a universal process where particularities represent negative influence.

Terminologically development has four meanings (a) a gradual process of unfolding (b) A fuller carrying out of details, evolution in the sense of production and new forms of matter (d) growth of what is in germs that is growth from with in. In common parlance development is defined as means of 'acquisition by a society of industrial techniques and technology' (Hutchinsons Dictionary of Ideas). These definitions are symptomatic of the nuances and elusiveness that is inherent in development. 'The complexity is more aggravated by the fact that terms like modernization, structural adjustment, economic development fall with in its rubric, but one common thread that runs through all definitions is idea of 'Telos'. That it is a teleological process moving towards a predefined end (Michael Pretes; 1997). "It is an evolutionary social system moving from simple to more complex and refined ends"(Michael Pretes; 1997:1422). End here being acquisition of industrial techniques and technology. Gusteva Esteva while tracing the genealogy of development describes it as a process through which potentialities of a subject or an organism are released until it reaches natural complete and full-fledged form, inferior to the superior, from worse

to better. Development as a word had evolved in biology to describe natural growth and till now it has not been able to delink itself with the intention, with which it was formed – growth, maturation and evolution are still its defining traits. These traits when applied in social sphere result in emphasis on ever increasing industrial growth.

After the Second World War development came to the centre stage and remained on unquestioned motor based on techno-scientific rationality (Chatterjee and Finges; 1994). The importance of being developed became crucial as a category of underdeveloped was created – who ever did not comply with western progress was undeveloped. Underdevelopment as a category was contrived by President Truman on June 20, 1949. " We must emphasise on a bold new programme for making benefits of our own scientific advances and industrial progress available for the improvement and growth of underdeveloped (sic) areas -On this day two billion people became underdeveloped" (cited in Esteva; 1997:9). The process of subjugation, marginalisation and dispossession was legitimized. Underdevelopment itself is a coded and a western concept as societies were made to realise that they are underdeveloped and development that is externally guided would force them to be free, as they were underdeveloped not only in economic sense but also social and cultural sense. The most daunting endaveour now in front of the undeveloped societies was how to become developed. This has to be realised by replacing the 'traditional' with the modern, by putting local culture, their knowledge base, the social

customs at the altar of development. As one of the advocates of development argued, "Economic development of an underdeveloped people by themselves is not compatible with the maintenance of their traditional customs and mores a break with the latter is prerequisite to economic progress. What is needed is a revolution in the history of social, cultural and religious institutions (sic) and habits and thus in psychological attitude, their philosophy and way of life. What it therefore, requires amount in reality to social disorganisation unhappiness and discontent in the sense of wanting more, that is obtainable at any moment is to be generated. The suffering and dislocation that may be caused in this process may be objectionable, but it appears to be the price that has to be paid for economic development" (Whose Common Future; 1993:17). United Nations incorporated this model of development and economic growth in its agenda and the yardstick for measuring development was GNP. "The problem of underdeveloped countries is not just growth but development ... development is growth plus change. Change in turn is social and cultural as well as economic and qualitative as well as quantitative (United Nations proposal for action, cited in Esteva; 1997:17). This mode of thinking led to the concept like modernisation, structural adjustment which were predicated on the goal of economic growth for the underdeveloped nation that in effect implied forgetting histories, knowledge culture and embracing western conception of progress.

The underdeveloped countries embarked upon this route to become developed by prescribed policies. "Development in the Third World suffered from this misconception that experiences of industrial societies were universal and not historically specific and thus can be extrapolated to the peripheral countries" (Luxembourg; 1957: 371). What was jettisoned was that 'economic growth variety' of development was premised on the annexation of colonies and destruction of subsistence economies. As development has to be achieved, underdeveloped countries had no colonies left to capture, therefore colonisation of hinterland and enclavised development started. "The development paradigm became institutionalised in the very structures and the nature of the Third World nation states. They started entering the industrial circuits by borrowing money and exporting raw materials. The nature of development was not questioned till 1960s (Chatterjee and Finges; 1994:5).

By 1970s critique of development started questioning the very basics of development, which was premised on imports and exports of natural resources. Internal colonisation as well as dispossession and development. Environmental consideration did not figure in state's priority list. "There exists a strong link between political security and the neglect of environment...ambitious development with the help of western economic advisors relied heavily on industrialisation to catch up with the "First World" (Peat; cited in Bryant and Bailey; 1991:56). The Third World in its

desperation to acquire economic development for which capital goods were required embarked on natural resource exploitation.

The word development is thus is still enveloped within the miasma of meaning accorded to it by Haeckel, the creator of Ecology, "Development is from this moment on the magic wand with which we will solve all the mysteries that surround us or at least will guide us towards the solution (Sachs; 1997:47).

DEVELOPMENT: A VIEW OF FOREST-BASED COMMUNITIES

"Development as a postcolonial project was an affirmation for accepting the model of development under which colonial world was to remake itself as the colonising west" (Shiva; 1986:1). Development as a western project creates its own categories, manners and criteria of richness and poorness. Marshall Sahelin (cited in Shiva; 1998:8) referred to forest based communities as the original affluent societies, but what the category of underdevelopment does is that it becomes "a constant reminder of poverty, of an undignified condition and to escape from it they have become enslaved in others' dreams" (Esteva; 1997:14). Thus development is rooted in the social construct of west, of their way of defining life. G.N.P. as a criterion for measuring poverty becomes a measure of gauging how real wealth is declining. The western concept of wealth conflicts with the conception of real wealth of such societies, for them real wealth is the nature and, for development real wealth can only be acquired by devastating nature.

Subsistence economies of forest-based communities are labeled as poor and underdeveloped economies, which for these communities had been the only source of survival. Rudolf Bahro calls this 'the politics of development' which leads to a universalised definition of development and poverty. Poverty henceforth becomes a cultural construct that is measured through commodities and consumption levels and those who do not fit in the exploitative consumerist culture are defined as poor and are forced to develop - development that will free them from poverty. The internal logic of development is based on dismantling forest based economies and superimposing on them an externally defined way of life, which can be equated with politics of usurpation. In this politics of usurpation power has a central role to play and 'power defines development' (Alvaroz; 1992:95) and this power is in the hands of north and elites of south.

DEVELOPMENT AND FOREST:

The origin of development discourse has its roots in the colonial times. Britishers with their philosophy of domination over nature, based their whole development on the extraction of natural resources, as the edifice of development had to be built on timber, raw materials. With this was coupled the onus of civilizing the savages as forest based communities did not fall in the concept of humans. In this mission science played an important role and "scientific ideas were deeply embedded in imperial rule" (Mackenzie; 1991:7). The scientific notion coupled with industrial and commercial exigencies led to transformation of environment, first by

commercial felling of forests and later by scientific management of forests, which was the expansion of reductionism in ecology. The reductionism inherent in scientific management works at two levels. Firstly it reduces multispecies forests to single species plantations and secondly, in the social sphere by wiping away alternate ways of living and knowing. What it entails is reducing plurality of ways of life to a single superimposing way of life that is western. The reductionism from multispecies to single species forests was done for commercial reasons of providing quick growing and valuable timber. The whole scientific reductionist paradigm did not have any place for the subsistence of these communities, which led to their alienation from forests. Alienation became more marked and legitimized by passing acts that denied them rights within their own environment. In the ultimate analysis what happens is just not deforestation but also loss of holistic way of perceiving forest due to monetisation and commodefication. Trees lose their intrinsic value and become 'green gold' to be reduced to 'black gold'. Claude Alvaroz calls this reductionism of progress. 'A forest can be reduced to a sheet of wood and then reduced to matches, the same forest which is a community and a habitat for millions'. (Alvaroz; 1992:94).

Overtime, with refinement in science, single species plantation gives place to the concept of 'Masculine trees' (Shiva; 1988:5) as these are the trees, which are best in economic terms. It leads to dispensing away of the less favorable species that are slow growing and are not needed in industrial development. In this project science in nexus with market turns to clonal

propagation and genetic engineering that will produce 'super trees' and 'masculine trees' which are marked by uniformity needed for the market. "Linked with the imperative of genetic engineering to dispense with species other than its favourites, is the political economy of dispossessing with the small persons and her needs for survival" (Shiva; 1997:5). As genetic engineering tries to do away with species that are valuable to the forest based communities but not to industries, as the needs of forest based communities are seen as dispensable because they do not carry voice in world economic and political system.

Science and development are therefore mutually reinforcing as development appeals to science for efficiency and modern science is desirable as it makes development possible. Thus science becomes the weapon of development. The logical extension of reductionism in forest in the modern times is social forestry, which provides for single species commodity production plantation. It differs from scientific management in the sense that it tries to appropriate communities and their woodlots, small farmers land in its project of destruction. Thus it is more insidious, as it not only captures physical space but also mental space. The aim of social forestry remains pulp wood production for rayon, as a factory obsessed state finds in it a congenial form of exploitation for commercial benefits. Eucalyptus was posited as an answer to the growing fuel wood crisis – what was not taken into account was that there are other indigenous species that have quicker growth rate than eucalyptus. The reason for the choice was not

afforestation or meeting fuel wood needs of communities, it was directed

towards fulfilling the pulp wood requirement, and here clearly power defines

knowledge, choice and methods. "Afforestation with modern science

becomes in effect deforestation of nature and elimination of culture which is

based on symbiotic relationship between human beings and nature"

(Alvaroz; 1992:88).

ALTERNATIVE VIEW OF DEVELOPMENT:

The modern concept of development was institutionalised by the

Bretton Woods economic summit. The approach that it gave birth to was

eurocentric and culturally, economically and technologically biased towards

the north. It denied the role of specificity and particularity of different

cultures, economics and social structures. The goal of dominant

development paradigm prescribed by north was universalisation and

integration of world economies. Six decades of this model of development in

the south speaks volumes about the eurocentric model that imported the

legacy in the form of highly centralised form of governance, degraded

environment, economic inequalities and marginalisation of communities.

The model went on to systematically sabotage any attempt to empower

forest-based communities to control and manage their destinies. It led to

forcing people into the market where they lost their identity as individuals

and became faceless consumers of material resources. "Development as

capital accumulation and commercial economy for the generation of surplus

and profit thus involved the reproduction not merely of particular form of

creation of wealth but also associated creation of poverty and dispossession" (Shiva; 1988:1).

The alternative to such form of development that is premised on capital accumulation, has to be based on a moral economy, which will curb the destructive and universalising tendencies of present form of development for achieving such a project, the axiom of development 'Big is the best' has to be analysed carefully. 'Big is the Best' entails not only a western model of development bus also a centralised system of governance, in decision-making, massive infusion of capital and large-scale projects. This predisposition towards quantity and size are the biggest hurdle for people oriented development. Thus a shift is required from quantity to quality which means that the focus of development project will be on basic needs, adequate food, shelter, economic security and equitable distribution of resource. Alternative model of development is premised on a holistic approach toward development where environmental values are embedded in political and economic system. This model when translated into reality would mean the transformation of older model, the key features of such model of development will be decentralisation at the level of governance, appropriate technologies that are small in scale and understandable by people, it will also mean respect for community and community's knowledge. Participation is at the core of alternative model of development and will be the hallmark of every area of activity, in implementation of plan, benefit sharing and evaluation of programmes. Participatory model of

development would have at its core principle, the right to information where people will have the necessary information available to understand implications of such development. Green principles of endogenous development provide a systematic framework for the alternative model of development; its main characteristics are –

1. Social unit of development should be small and rooted in values and institutions.

2. Self-reliance on resources and appropriate technology.

3. Social justice and ecological balance that will entail awareness of local ecosystem, potentialities and limits.

4. Redistribution of resources, reassessment of industrial methods of production, social justice and search for new forms of social roles.

Guha and Gadgil in the Indian Perspective put forward on eclectic model of development that is a mix of prevailing paradigms of development - Liberalism, Marxism and Gandhism. The model put forward by them takes the best from these models and builds upon an 'Ideal' model of development. From Gandhism it takes decentralization and empowerment of local communities and moderation in resource use. From Marxism it takes the idea of equity and empowerment and from liberalism public accountability and democratic system. The alternative, which emerges from it is a move towards a participatory from of development, governance, accountability in public life and resilient gross root democracy. "The

nurturing of wider participatory democratic institutions should be complimented by opportunities for people to decide directly on a wide range of development issues" (Guha and Gadgil; 1995:124). The move towards decentralisation also implies that power of controlling natural resources should reside with people, as it will take into account local nuances and aspirations of local people. More importantly it will give communities stake in management of natural resource and will lead to the renewal of traditional and indigenous methods of development.

CONCLUSION:

The ecological and cultural colonization is being challenged in present times by communities and people who are demanding rights to define life and their own future. What it points out is a new vision of modernity, progress and development, which pleads for equitable socio-ecological society. This alternative vision of equitable and ecological society is one were differences in world view of perceiving and managing lives and natural ambient are respected. The reimaging of development does not imply nostalgia or romanticisation but a pragmatic step in the sense that it acknowledges the fact that when what lies ahead is total darkness and devastation, the right step may be backward and in this sense it takes the best from the past and learns from mistakes made. The focus of the alternative model of development has to be preservation, creation, reinforcement of community and an active citizenry. These are the very bases of resolving ideological and social crisis. The first tentative step in this

direction would be to broaden the meaning of sovereignty (Crush; 1997). Sovereignty has to the broadened beyond its legal significance and should take into account cultural variations, redeem the position of forest-based communities and change their position from being the "fourth world". For this to take place social political membership has to be extended and protection of their rights is required. "The new image of development should be based on the view that different people work differently, cultures reflect the landscape and landscapes reflect the culture" (Norgaard David; 1994). The new model of development has important implications on the methods and institution of the state and market as it exhorts that communities must themselves become active participants and citizens reclaim the development process. The goal has to be empowerment of people. Empowerment here goes beyond relationships of hierarchies and dominance as then only we can envisage reharmonisation of people with nature.

There has to be a realisation that development is not about goods, it is about people and therefore primacy has to be accorded to socio ecological criteria in place of economic criterion. It is a step forward as it is enlightened enough to know what went wrong. "The story that science and modernism unfolded in the last century and the first half of this century was immature, expurgated and truncated. We need a new narrative for survival with dignity" (Norgaard; 1994). The new narrative of survival has to be based on a new understanding of both science and technology. A new understanding is needed as science has to be put on right path by demystifying sciences and

fashioning in a way that is creative and accepts local sciences and knowledge. A move is necessitated towards universal science that is not reductionist but holistic with truth simultaneously having many levels and at the same time grounded in consciousness; Emphasis has to be on Holism (Capra; cited in Alvaroz; 1992:153). Observers have to be made participants, processes should have affinity with ecosystems.

The axiom of the alternative paradigm should be the mantra given by Mahatma Gandhi. that *the world has enough for every body's need, but not enough for one person's greed* and subsequently the goal should be maximization of well being with minimum of consumption (Schumacher; 1973) and a vision is required that according to Winona La Duke is- "it is time to change from a society based on conquest to a society based on survival. There are no more frontiers and there is nothing left to conquer. We must take the change if we are to survive, if we are to rebuild communities and heal ourself. And we must articulate a vision ... We have to articulate a vision of a new society based on decentralised energy production, on deindustrialising the society, on using things like the peace dividend, transforming a society from a war economy into a peace economy" (Laduke; 1996).

CHAPTER - II

CONCEPTUALIZING RIGHTS IN FOREST BASED COMMUNITIES

"Right claims always have a highly specific and social character".

Alasdair Macintyre, (cited in Benton; 1993: 105)

WHAT ARE RIGHTS?

Rights can be viewed as an instrument, guaranteeing certain freedoms and liberties. These can be either against the state or can be in the form of directives to the state to help in fulfilling certain freedoms and liberties. According to Ritchie (Ritchie cited in Jones; 1994: 92), the essence of what constitutes a right becomes clear, if it is defined and elaborated in legal sense. " It is a claim of an individual upon others recognised by the state". The aforesaid definition of right implies that state is not the creator of rights. State's role becomes crucial in recognizing rights. Shapiro maintains that when we talk about right we are essentially making assumptions about concepts that have moral and political lineage and are essentially relational in character. Thus right expresses a complex yet substantive relationship among different variables. Variables here being freedom, liberty and justice, he further maintains that a claim about rights makes four-fold assertion – 1. about the right of entitlement, 2. subject of entitlement, 3. basis of entitlement and, 4. purpose of entitlement. If we put these assertions in a

schema - the formulation that emerges is one of 'who is entitled to what, on what basis and for what purpose' (Shapiro ;1985 : 4).

As mentioned earlier liberty forms one of the essential ingredients in the schema of rights, it is always assumed that claims and basis of rights emanate from the right to liberty or equal liberty which means that only those rights are to be preferred that guarantee the greatest degree of individual liberty compatible with like liberties for everyone else. H.L.A. Hart, while talking about rights says that above all one moral right exists that is equal right to all men to be free. (Hart ; 1985, Kukthas ; 1985 : 236). The importance granted to liberty in the framework of right becomes evident on analysis of historical trajectory through which the whole debate about rights has been carved out. Rights initially originated in the liberal democracy as a guarantee to individual against atrocities of state and church. The earliest manifestation of rights was in the form of natural rights, in the seventeenth and eighteenth centuries. Natural Rights promised a break from social tyrannies and aimed at giving rights to life, liberty and property. Since right to life, liberty and property were seen as foundational rights, these rights become primary rights and fundamental to other kinds of rights. Thus natural rights are those rights which should be sanctioned by any ideal society to all its members, Human rights in the present times are direct descendent of Natural Rights tradition and similarly are universal as well as fundamental. They are universal because they belong to all humans by virtue of humanity and are fundamental because of their being inviolable in

character. Due to being universal and fundamental to all, human Rights are seen as capable of being extended equally to all persons and therefore should be upheld by all states. Their claim to universality is also due to their aim being one of defining essential moral conditions that must be guaranteed to citizens in any social and political order. " They are thus a meta political, moral frame work for political and social interaction by which we can judge a given system of set of arrangement to be just or not. (Jones : 1994 : 15). John Galtung further maintains that reciprocity is implied in the construct of human right as the main focus is on human individuals and their rights. Thus if human have right they are required to full fill certain human duties (Galtung : 1994 : 4)

ARE ALL RIGHTS UNIVERSAL?

The popularity that rights command at the present juncture does not in any way suggest that there exists a universally applicable definition of rights. Right as any political construct is essentially contested. Contestation about rights does not imply that 'Rights ' per se are contested; problem arises about claims, subject matters and on the question of who should be the repository of rights. These contestations about rights lead to heterogeneity in claims and claims have been pushed forward to break from the tyranny of universality of rights itself. The Universal Human Rights discourse faces the charge of Eurocentricism and Universalism. Human Rights are perceived as essentially eurocentric in conception. " The west is so powerful that western history = Universal history, western culture = universal culture and by

implication Western Human Rights = Universal Human Rights (Galtung;1994:1). Universality of Human Rights becomes clearly visible if we trace its origin. Like Rights, Human Rights had been a Western notion. It was born in the mind of west and propagated by the west. And hence is loaded with values of west. "This becomes manifested in the assumption that world could be divided into two parts ... a centre (west) and periphery (the rest of the world) " (Galtung; 1994: 3). In this binary division west is seen as the centre of the world, which gives west freedom to construct values and ideas for the whole of the world. The end result of such thinking in that what is good for the west is good for the rest of the world. The immediate effect of such assumption has been entrenchment and institutionalization of a system in which centre remains at centre and periphery remains at periphery. "Thus the doctrine of Human Rights is an arrogant assertion by culture that its values should take precedence over and if necessary displace those of other cultures" (Jones; 1994: 214). The eurocentric bias in Human Rights discourse is also reflected in the assumption that one set of belief and culture i.e. industrialism, modernism and capitalism can provide solution for cultural diversity (which is a retarding factor and represents negative externality in a system and has to be purged out) and lead to a homogenous vision of Human Rights. It therefore has become a reflection of the very notion that one set of values can be translated into universally valid set of rights. What this notions leads to is the negation of the possibility that values and practices central to a culture

can exist within Human Rights. The other most pernicious effect of Human Rights discourse is its being framed in the dominant language of west which has led to the ascendancy of atomism and individualism to the extent that the only valid claimant of rights are individuals, groups and minorities as contenders of rights have no place in Human Rights discourse. Even if groups and minorities try to put forward their claims, they are immediately dubbed as promoters of oppressive social structures and a return to pre modern age. Thus groups and collectivities are perceived as facilitators of hindrances in the self-fulfillment of individuals qua individuals. Atomism makes it evident that any kind of totality does not have any place in the western worldview, nature and ambience are seen as things 'out there' and not 'within us'. When we take the particular case of natures and claims of natives on their ambience, logic of industrialism and enlightenment comes to the forefront as objectifying nature and individualizing communities was required for commercial and imperialistic purposes. This meant on one hand creating a binary division between human and nature and secondly atomizing individuals by breaking up collectivities who would have carried a strong voice as a group.

The other ruling idea of eurocentricism has been that of unification and transcendental principle which does not tolerate plurality of views. "It was god in the old days... one or more of the successor of god nowadays- the successors at present are United Nations, State Organizations and Developed States". (Galtung; 1994 : 17). We can conclude from this that

Human Right is essentially a western construct, which was put forward for granting sanctimonious space to the individual - space that no collectivity can encroach. The effect of this has been alienation from collective life, ambient and in many cases loss of 'self'.

The fundamental question that arises in the whole talk about universal rights is should we compel a society to respect rights even though the notion is entirely foreign to its own culture? What in effect the universalism and homogenization of rights enables is destruction of pattern of life that is characteristic of entire community and which give meaning and coherence to the live of its members merely because of a certain belief that these patterns of life are not somehow right. It should always be kept in mind that respect for individual entails respecting culture in which individual identities and forms of life are embedded.

TOWARDS GROUP AND COMMUNITY RIGHTS:

Inherent in the character of right is a tension that leads to assertion and counter assertion and in certain cases exacerbates rather than ameliorates conflicts. "The readiness to claim right has led to people announcing entitlements to this or that without giving sufficient consideration to the burdens and sacrifices that these alleged entitlements entail this or that will have on others" (Bellamy; 1993). Due to inherent contradiction and internal tension prevalent within the contents of right - rights can be genus faced having one side, which is attractive, and liberating while other side hierarchical and suppressive. This becomes a strong

possibility, as rights in contemporary time are nothing more than prescription for a universalized way of life. The very prudence and assertions with which rights are associated and which makes it attractive to some--similarly some of those who place high value upon ideals of community and solidarity see " Rights" and how they have evolved as individualistic, divisive and an obstacle to closely bundled society to which they aspire. "The present assertion of right is clarion call for situating rights within a community or a group. "The expression and elaboration of the doctrine goes beyond and has been taken up by groups struggling to gain a degree of control over their lives" (Bellamy; 1993). Richard Bellamy further argues that proliferation of right claims in contemporary times has been possible due to the fragmentation of traditional concept of membership and citizenship associated with break up of nation states and also due to the ongoing tension between global and local. The related process of greater functional differentiation and the globalization of economic, social and political activities have subjected the states to corresponding countervailing pressures. The one calling for heterogeneity, at the local level and at other extreme greater, interconnectedness at an international level. As a result nation state appears too large for some purposes and too small for others (Bell; 1987, cited in Bellamy).

SOCIAL 'SITUATED-NESS' OF RIGHTS:

Liberalism as well as Marxism ascribes, no substantive value to groups and communities, both rule out the possibility of individual being

situated in a complex whole. Individuals are taken out of his or her surroundings and placed as an individual. Marx in particular was very scathing about the Right of man, he said, "None of the so called Rights go beyond egoistic man. Man as he is in civil society mainly as an individual withdrawn behind is private interest and whims, separated from community" (cited in Benton; 1993:107). Laying charges of egoism on individual rights did not in any way signify that Marxism is benign towards groups and collective rights. Marxism did not accord group rights the status of rights, as the main concern was not of community and group but the internationalization of the proletariat. (Kymblica; 1985). Liberalism on the other hand has been opposed to group and community rights as the recognition goes against the core philosophy of liberalism, which is premised on treating individuals as individuals and as 'self originating source' of all valid claims. Communities and groups are not seen as "self originating source of all valid claims. What is of utmost importance to liberalism is that individuals be treated as equals, no further obligation to treat communities as equal exists. Community is denied existence and becomes secondary. Ted Benton argues that liberal notion of atomistic individualism denies social and ecological embeddedness. Further it refuses to accept that there are certain basic ecological conditions essential for human survival and here no trade offs are allowed. " Rights are linked to individual interest and do not coincide with social and ecological whole". (Benton; 1993:124). The focus on individualism disregarded cultural and

community membership. The importance of moral title of individuals for liberalism became so crucial that groups and communities were discredited. It was not even given a thought that establishing safeguards for individuals will result in erecting fences which will separate and divide people from one other. A society that places high premium on individual rights "can look like one whose members are invited to retreat to their individual moral territories" (Jones; 1994:209).

Thus rights till now had been dominated by celebration of individuals as individuals. The atomisation is due to its searing off, from community and being left in a vacuum but can rights be conceived in a vacuum? As independent of group and community? It is not only difficult but also impossible to view rights as an isolated phenomena and above social situation. The social situated-ness of rights becomes evident on closer reflection. Even the proponent of individual rights and negative rights situate individual within a market. This market can be a group or a community. The recognition of rights operating in a communal context has been hesitatingly acknowledged by radical individualist theorists like Nozick, who accepts that the owner of only water tank in a desert infringes the rights of others by charging extravagantly for the use of it. This acknowledgement amounts to the acceptance of the fact that rights cannot exist in social and moral vacuum. They can only be enjoyed in certain situations defined by the fact that there is a presence of certain collective goods and understanding. "So conclusion is that far from system being constituted by individual rights,

these rights depend upon certain social institutions and values which give them a purpose and facilitate their exercise" (Bellamy; 1993:49). Therefore it becomes apparent that rights are not only situated but presuppose a given way of life. What is questioned is the kind of social situation in which rights have to be based. It follows that different societies can have different conceptions of rights. Communitarians situate rights within a community and associate rights with membership of a particular kind of society or space. What has to be valued is a shared tradition and cultures for the continuation and preservation of inherited forms of life. Communitarians thus situate rights in the context of community and community is the sole bearer of a particular conception of rights. Function of rights for Communitarians is not to make individuals just individuals but to co-ordinate a given way of life motivated by certain conception of the good. Individual rights for them are not independent but are situated in a collectivity.

DEFENCE OF GROUP RIGHTS

The idea of defence of the group rights, community rights originated from the notion of cultural membership as cultural membership is seen to constitute who people are. Young points out that the concept of group has become a flash point due to social movements, which are organized around cultural identity. Social movements, asserting for group rights, find themselves with the 'dilemma of differences as on one had they must continue to deny essential differences... On the other hand they have found

it necessary to affirm that there are other group based differences that make application to a strict principle of equal treatment unfair because the difference puts them into disadvantaged position and perpetuates disadvantages' (Young; 1997:266). She further mentions that group differences occur in capacities, socialization, values, cognition and styles which are not taken into account by the present right regimes due to the fact that tyranny of universal rights takes every one to be on the same platform. To do away with injustice of individual rights, instead of universal citizenship, in the sense of generality we need a group differentiated citizenship and heterogeneous public. In heterogeneous public differences are publicly recognised and acknowledged as irreducible. (Young; 1997: 267) Group differentiated citizenship can be in the form of special rights that will guarantee minorities the status of equality in having the same opportunities, to live and work in their own culture. (Young: 1977: Kymblica; 1991). Richard Falk puts forth the cultural diversity argument to support group-differentiated rights. "Societal diversity enhances the quality of life, by enriching our expression, expanding our experiences and cultural resources" (Falk cited in Kymblica; 1997: 371). Hence protecting minority culture is increasingly being recognised to be an expression of overall enlightened self-interest. Cultural diversity is seen as valuable due to fact that it contains alternative modes of social organization and can be useful in new circumstances. This point helps to elucidate the traditional life style of indigenous people that provides a model of sustainable relationship with the

environment. "Indigenous people may provide a model of sustainable relationship, inspiration and guidance in the essentials of world order re-design" (Falk; 1995: 371). Michael Sandel points out that a person is rooted in community and the notion of atomized self does not exist because identity to an extent is defined by the attachment and commitment one has. Individuals are not 'mutually disinterested' but are marked by mutual reinforcement and inter-dependence" (Sandel; 1997). Identity and well being of members of the group are linked to members of a group who identify themselves, explain who they are in reference to their membership in the group. Alasdair Macintyre, emphasizing the importance of community says, " The story of my life is always embedded in the story of the community from which I derive my identity". (Cited in Kymblica; 1991). He further says, "We all approach our circumstances as bearers of particular social identity". Therefore Communitarians emphasize the importance of community in defining ourselves. Thus rights do not flow from individuals but are to be defined in the context of community. Will Kymblica's approach to the whole question of collective rights is one of recognizing individual rights as well as collective rights and that recognition of wide ranging group differentiated rights should be inbuilt within institutions but these groups rights should not be at the cost of individual rights, especially individual freedom and social equality. According to him cultural rights could be accommodated through granting rights to individuals. What is required is institutional mechanism that accommodates group rights and

certain group specific rights. The institutional mechanism suited for this is recognition of self-government. Self-government recognizes certain collective rights like property ownership, ability to follow particular life style and crucially to take decisions. Iris Marion Young points out that by giving special rights we will accept differences which is the foundation of equality. Accommodation of differences is the essence of equality and group differentiated rights can eliminate disadvantages by alleviating vulnerability of minorities, such group differentiated rights are territorial autonomy, land claims etc.

ECOLOGICAL COMMUNITARIAN APPROACH

One of the most important issues emerging in the present times is that of rights of survival of forest based community. Here survival is not the same as essential and primary needs. But survival in this context is of primary and essential needs as well as survival of their natural surrounding, natural resources and indigenous knowledge /technologies system. What is at stake here is right to survival within a given ambience, with their particular conception of culture and crucially survival of space and community within which their cultural and social elaboration takes place, within the space where individuals define themselves - cultures, society, community, ecology and space are of critical importance as individuals are bound within them. When we talk about forest-based communities, the issue becomes all the more critical and compelling as here 'double embeddedness' takes place. One of the communities of human beings and enclosing this

community of human being is community of nature and forest. (Benton; 1993). Thus cultural and physical space both become part of embedded self. Identity here is derived and linked to both community and physical space. These linkages are so strong that in the case of forest based communities certain individual rights (right to property) become redundant and in a certain cases regressive. For example individualizing property had been a right that does not fit within the culture of forest based community as, it has been mentioned earlier rights, right need a social base and pre suppose a kind of membership therefore there congruity with the social structure and community becomes importance. In fact social situated-ness had never been a contested issue. The issue had been what kind of social structure is preferred and when the prevalent social structures and social embeddeness of rights are ignored, rights become regressive. It is here that human rights which are culturally biased towards west fail as they deny intrinsic worth of individual, communities, prior right claims, community rights and rights of prior innovation of communities. The reason for such atomism and denial of group right is that individual rights theorist refused to accept that the ecological conditions are the foundations of human survival and cannot be bargained. The remedy out of this dead lock is in bringing equilibrium between differing conceptions of rights that entail recognizing diverse ways of life and patterns that are inextricably linked to community rights and community patterns. When this recognition is expanded to forest based communities, it will mean granting to them rights over biological and

intellectual commons that shape their way of life, self and in turn communities shape them... It will mean that commons cannot be seen as existing 'out there' - a mere-biological fact but will be seen as having symbiotic and harmonious relationship between people, communities and common forests. " Environmental and political rights should be interwoven and acknowledged alongside, as well-being of individual is indissolubly linked with well being of broader ecological community". (Benton; 1993: 84). Ted Benton argues that individuals do not enter "Into social and ecological relationships but are constituted by it" (Benton; 1993). Ecological communitarian accepts the fact that ecology cannot be separated from human community and both provide the ambient within with individuals are situated.

THE INDIAN SITUATION

Forest Based Communities As Group:

Groups as a collectivity can be differentiated from other collectivity and associations as groups involve identification with other, that is in reference to collectively people identifying themselves .A person particular sense of history, understanding of social situation and personal possibilities, his of her modes of reasoning, value and experiences are constituted at least Partly by his or her group identity (Young; 1997: 261). Social groups are not aggregate or association. Owen fiss brings out the difference Clearly by saying "I use the term group to refer to a social group.... a social group is more than a collectivity of individual all of whom, to take a polar example,

happen to arrive at the same street at the some moment (Owen cited in Johnston; Kymblica; 1995: 182). Thus Owen tries to define a group by defining what it is not and that group has a substantive identity apart from its members and it cannot be reduced to individual identity, furthermore a social group is marked by interdependence which means the identity of a member of group linked and develops by interaction with others. Individual explain who they are in, reference to the membership in a group and it is the membership that determines the status and well being within the group. Michael Macdonald sees, self-collection as the core of collective identity of a group, which is based on internal recognition of some significant commonality. (Kymblica; 1985) Darlene Johnston argues that relevant set of groups are natural and involuntary as people are born into them, he further says that groups are groups by virtue of the existing multidimentional relationship, recognition and obligation among its members. (Johnston; 1985).

To sum up, the characteristic of interdependence, recognition obligations provide an intricate framework for determining whether a given group is a social group or not. Forest based communities as a contender of group differentiated and group rights exhibits the entire characteristic, that are found and in any kind of theoritisation about groups. Pofftenberger while describing the resurgence of community based conservation point out the 'group ness' of forest-based communities:

Forest based communities are managed by groups comprising of households that traditionally and historically uses the area for forest product. These entities are homogenous and are groups that are smaller than Panchayats.

There exists a forest poverty and tribal interface - forest protection activities are common in areas that are characterized by significant concentration of forest power and high tribal population.

Community or group based conservation is prevalent among the areas were degradation has reached its critical stage and groups have been dependant on it.

These groups are frequently formed with little or no out side intervention, but as result of concern over resources depletion.

Community based conservation is often located in small residential cluster who share a common relationship with forest.

(**Poffenberger**: Managing Forest as Common Property: 1998).

As a group, forest based communities share a historic and traditional relationship with the forest as well as with the group of individuals, there relationship with land is a relationship that has evolved over centuries and, thus they have evolved knowledge about natural resources. Thus any effort to save nature has to take into account the linkages between forest based communities, nature and culture. Moreover forest based communities are socially as well as physically rooted in forest and their social organization revolves around the management of forest which is reflected in their cultural values. Culture as marker of group identity in starkly presents in them and on its basis their culture can be differentiated from majority culture. Calling them as an association fails to take into account there close and inextricable relation between themselves and with forest. As there exist an inter dependence and inter-linkages, the two determinants of group ness. These

52

inter-linkages in case of forest based communities is also with common social and physical situation. "The indigenous knowledge and belief system is determined their cultural ethos, value system and world view. This world view is of treating man as a strand in web of life" (Krishnan; 2001:47) Forests thus becomes a social and physical space that has to be used. If we take the criteria of survival and dependence than resources dependency on forest becomes evident as, it provides for all of their subsistence need and have, depended on their immediate natural environment for survival, which has led for them developing a stake in conservation.

The need for group differentiated right for these communities becomes an urgent task due to forest-based communities being marginalised and oppressed as a group, as well as individual. Iris Marion Young says that a group is in need of protection and, is oppressed when such condition exist:

Exploitation- when benefits of there work goes on to others without reciprocally benefiting them.

Marginalisation-as a process occurs when group and communities are excluded from participation in major social activities.

Powerlessness-living under the authority, of others and having little authority over themselves.

Cultural imperialism- as a group they are invisible, in society in general and have little opportunity for expression of society.

Forest based community fit into the categorization of Marginalisation and oppression. As a group they have been exploited not only by urban elites but also by the government policies and also by process of modernizations and nationalization that have gone in hand with their Marginalisation and

exploitation. The initial stages of it started in colonial times when the early administrators saw forest of India as an obstruction to that prosperity of 'Raj' until the later decades of 19th century the 'Raj' carried on a fierce onslaught on the forest for the supply of durable timer. The revenue orientation of colonial land policy also worked towards the destruction of forests by creating the category of protected, reserved forests. The implication of states take over of forest was shrinking of the space in which these communities lived.

Universal rights and Human rights are premised the potentiality of individual human beings. These rights argue and claim superiority of individual rights and over culturally embedded rights. This is not to say that all the universal rights like to life and liberty are empty. Right to life and liberty had been conducive to individual who have suffered due to hierarchies and suppression. They had been especially helpful to individual who had been oppressed. Eulogizing group rights and community right is not without problem, as group rights and community rights have been site of suppression and subjugation, thus a balance and harmony is desired between groups, individuals and community rights. Viewing community, as homogeneous entity is wrong notion, there are many cases were community could be highly oppressive in its structure. There are groups within marginalized groups that have more access to social power and have concentrated social and economic power. Moreover groups within a society can have opposing interests. These majorities within a group can lead to the

denial of basic human right to internal minorities that are individual in character and are provided to all individuals as a guarantee against such social tyrannies. Such rights are life liberty and equality and are, foundational in character. Leslie green maintains that states by ensuring that minority groups are not oppressed by majority, it makes it conducive for the minorities to oppress internal minorities (Green ; 1985 : 269). The problem has to be solved because oppression of internal minorities will mean loss of personal autonomy that is inviolable in character and cannot be bargained. The alternative to such group, community tyranny is re-assertion of individual liberty and individual rights that are basic. Here the claim is not whether individual's rights are supreme or group rights. What is crucial here is that certain individual rights cannot be traded off as they provide minimal conditions necessary for human beings to lead a live of dignity and be free from oppression. Whether it is a group or a state as, these rights transcend groups and states. Individual rights when taken in context of group rights will mean that even the internal minorities have the right to be treated equally. The direct conflict between individual and groups can be witnessed in indigenous societies where indigenous elite's have argued for the right to reserve land till perpetuity where as there are some indigenous people who are of the belief that communities should be free to use the land as an economic asset to be brought and sold. Groups can be highly oppressive in regards to their social ordering as in caste societies, where lower cast does bulk of work but benefits accrue to the higher caste. Such situation calls for

a change, in intra group structures to make it more equitable. The alternative to it is granting certain human rights irrespective of group membership. Kymblica while talking about minority culture offers the solution by giving both individual and group, rights, without prioritizing any kind of rights over other rights. According to him, individual rights cannot be ruled out as they perform some important functions that are imperative for a society. (Kymblica ; 1991) Kukthas is of the view that for the sake of group any departure from basic individual rights is wrong as they define the minimal condition for human beings to lead a live free from tyranny. He says that individual should be provided with the right to exit, from the community, as groups have no right to inflict oppressions on individuals and thus one fundamental right exists that is right to exit from community. In front of this right all other rights are secondary. Willian Penteny gives a more nuanced approach to the whole question of conflict between individual and group rights and for their adjudication. He gives two principles of harmonious co-existence

1.   A particular collectivity must not be impaired in its capacity to continue, either by the state or by claim on behalf of individuals.

2.   A particular collectivity must respect the maximum individuals rights consonant with preservations of the group.

Leslie Green argues, "Internal minorities are doubly oppressed as they have two majorities to contend with, the majority within a group and

outer majority". (Green; Ed Kymblica -1995). To bridge over the conflict he says that, "So members of internal minorities or majority groups have first individual rights" (Green; 1985: 239) for example a member of lower strata within community has right to fair participation in a political institution that governs them and they also have collective rights as members of internal minority groups.

Thus a balance and harmony is needed between groups, community and individual rights equal respect has to be accorded to both and no trade off should be allowed. For achieving this balance, the initial steps should be the recognition that some individual rights are incompatible with the conception of community as they are highly fragmentary in character and lead to weakening of social bonds. A Caveat is required that group rights can be highly suppressive, for this the sanctity of certain individual rights like right to life, liberty equality has to be maintained. Kymblica's appraoch to whole question suggests a viable option as he encourages a society were individual rights co-exist with group and community rights. Consequently group specific rights or community rights should not have a superior domain but should co-exist individual rights. (Kymblica; 1991).

HISTORY OF USURPATION OF RIGHTS

The expropriation of the rights of forest-based communities has been gradually and steadily taking place, the origin of such expropriation of rights can be traced to the forces imperialism and colonialism in the 18th century. The expropriation of rights was primarily for economic reasons nonetheless

it impact was felt on social as well as cultural life because this appropriation went beyond usurpation of forest based land but also to the usurpation of their surroundings, within which their lives are sustained. It led to dismantling a way of life, of indigenous knowledge and the 'self'. In short it was the usurpation of sovereignty not only in public realm but also in personal sphere. The reasons for fragmentation of public as well as personal realm was that social, economic and cultural issues in the context of forest based comminutes did not lie in watertight compartments. Rules and policies made for one affected other realms also. Vandana Shiva calls the process as enclosures of commons. The enclosures and the dilution was done through the project of cultural chauvinism which defined colonised people as savages and there by were seen as having no location or 'situated self'. The other means of denying rights was through perceiving other cultures and civilizations as inferior and in some cases races and cultures were denied the category of 'culture', which meant denying them apart in humanity. Thus humanity as a social construct becomes the category of denial.

In the case of property rights denial we accomplished through the doctrine of Terra nullies. Terra nullis literally means emptying lands, since colonised people were denied entry into the category of humans, exclusion of people from forest whether through cultural chauvinism or through changing the property structure was a ploy to penalize common property rights and to wipe out claim of rights' which tantamounted to extinction of Right of survival. The postcolonial forestry followed the same legacy, where

imperialism stopped the project of nation building stepped, which not only carried out the ongoing process of enclosing the commons but also shrunk them. The present era can be seen as a culmination of the process it has reached its zenith in disfranchising the forest-based communities that is due to the process of globalization and capitalism, which have unleashed usurping and monopolistic tendencies and the present forms and weapons of expropriation and disfranchising communities, of their physical space and rights. The energies are now turned towards invading the space of mind and knowledge through intellectual property regimes.

COMMUNITY RIGHTS AND FOREST BASED COMMUNITIES

One of the pertinent reason why forest hased communities have faced increasing Marginalisation, devastation and manipulation is due to the enclosure of common and the policies of the state .To reverse the process, fertile grounds have to be provided which will be conducive to the forest based communities first of all towards any kind of protection will require putting them back in their physical space, this entails giving them autonomy over their land back, which will mean giving them safe guards that will protect their culture and community, as personal autonomy in their case is linked to both. It will also mean shift to a paradigm that does not celebrate market and the state. The reinvention of people and community would in effect entail redefining the state. The state has to be made accountable to the people and should go beyond both the centralized and restricted state structured. Empowering communities in such scenario calls for legal system

that his inbuilt measures for protection and recognition of right of communities and not merely right of state, corporations and elites. At international level it will mean a reversal of whole human rights discourse as the sale owner of rights have been tailored for white western man. The absence of group and community right in human right discourse is due to deep-seated politics of the present time that takes into account powerful groups. Forest based communities, as a social group in the state and global environment are socially and politically weak. Their ability to be norm sender is highly restricted "The individualizing prospect deprives the underprivileged groups as such their political asset mobilization and ongoing struggle as a group, as it excludes collectivities such as peoples right and group rights "(Galtung; 1994: 16). It will in broader term require, creating right that are community and group specific. The initial step towards it will be granting rights to communities and group over the processes of life and redefining sovereignty in the era of globalization. The possibility in legal and policy spheres is immense. This will include recognition of rights such as customary right and practices, right to environmental integrity, right to access to restricted area and traditional habitat, right to common resource and right to indigenous knowledge system. When these issues are taken together with minority rights and indigenous people's right to the habitat, these rights are jointly known as 'Bundle of Rights', of forest based communities and the subject clearly lies at the trijunction of human rights law, biodiversity conservation and economic development. Parllel to the

concept of bundles of Rights is the concept of 'Traditional Resources Rights'. It used to describe the whole gamut of rights for forest based communities. Traditional resource rights encompass. Basic Human Rights self determination, Right to development that are used for protection, conservation, environmental integrity, right to land and territory, Right to privacy, right to cultural heritage, right to recognition and the right to customary law practices. Traditional resource rights are based on the recognition of knowledge and resource control, to maintain the identity and well being of forest based communities that are dependent upon control and preservation of resources it also recognizes links between cultural and biological diversity (see Appendix 1)

The positive impact of Traditional resource right had been that of attempting to unify the rights with in one framework, as all the above-mentioned rights exist as separate right with different political weights attached. Traditional Resource right are also known as the community right and calls for giving communities right to pursue their own way of life. The model of community rights ascribes intrinsic worth to the ecosystem as well as the communities. Communities are seen are having substantive existence and are not means to an end but end, in themselves. It is based on the fundamental ownership right of the communities to their natural resources. Knowledge and right and not seen an individual efforts but as social and cultural phenomena, the result of innovation with in the community are not due to individual effort but are public knowledge of the community.

Thus what a community right model envisages is a system of rights that accept cultural rights and also the notion, that rights with in a community are shared and most importantly it gives recognition to different culture, their way of perceiving and using natural resources and accept that property can exist without being institutionalized in an individual right regime. Thus communities can also be the bearer of property that implies and that rights are collective in nature.

Community right paradigm starts with the assumption that there is a plurality of communities and therefore plurality of views, which is reflected in their use and conservation of natural resources. Self-rule becomes the basic category. In ecological communitarian approach to right, indigenous self-determination become very relevant as it is the first step towards the autonomy of communities. The model contains with in itself the potentiality of answering to the needs of community and for protecting forest bared communities, through regulating access and right of communities against powerful commercial intents, as it gives communities right to organize their biodiversity, decide on its utilization and knowledge exchange, on the basis of the own wisdom, values, belief and epistemologies. Vandana shiva while discussing community right model warns against equating community right paradigm with corporatism. Corporatism stands diametrically opposed to customary community rights. The corporation of community takes place because the western legal system ascribes legal personality to the individual and not to communities and because the concept of collectives does not

figure in western jurisprudence. Further more the characteristic of corporation exemplifies all those practices, which are antithetical to communities and are reflection of capitalist mode of development like profit maximization, markets cooperation, efficiency output market, direct economies. The corporate model is an anathema to community life and is hierarchical, as it adheres to the principles of lack of consultation, refusal to delegate power and centralized control. "When commons and communities do not fit with in the narrow, non sustainable and parochial frame work of Eurocentric jurisprudence, than it is the frame work that needs changing rather then collective nature of rights and comminutes. (Shiva; 1977; 19)

ISSUES OF BIOPIRACY AND BIOPROSPECTING WITHIN COMMUNITY RIGHT MODEL

Two issues that have generated immense debate with in community-based conservation, apart from right to survival and self-determination are that of biopircing and bioprospecting. Both these issues are centered on knowledge, belief and on benefit of forest based communities. The important question in this regard is that is that whether communities are the sole owners of biodiversity or not. In communities, knowledge systems are held as a common resource. Community knowledge is also referred as TEK (Traditional Ecological Knowledge), that is a body of knowledge held by a group of people through generation living in the close contact with nature. Contrary to euorocentric belief of nature being on objective phenomenon scientist are researches have made it clear beyond doubts, "That wild

resources and environment are a actually the product of evolving relationship between human and nature. The symbolic and harmonious relationship reflects itself on biodiversity and biodiversity reflects on life. This has been called 'cultural landscaping'. The acceptance and recognition granted to cultural landscaping has made the ongoing debate about the issues of Intellectual property rights in biodiversity all the more volatile and fraught with internal tension. The contention pertains to the fact that whether biodiversity comes under private or public domain, the discourse centers on two positions, one that maintain that wild species or landscape are product of nature and therefore it is an open access system and thus by implication particular communities cannot assert a special claims over biodiversity and is a public domain. The other view that falls under private domain, suggests that communities have special claim over biodiversity as it has evolved through cultural landscaping. Landscapes becomes a category that has been partly constructed by particular communities and modified by them, here biodiversity is viewed as private and by logic indigenous communicates are the claimants.

Intellectual property right regime in essence is individualistic; it does not contain any concepts or clauses on community intellectual property rights. The imprints of western system of jurisprudence and ownership are to deeply entrenched. Its major flaw is in the context of biodiversity is that it grants exclusive right to natural and juridical person or creative individual, collectivities do not figure in it. "Contemporary intellectual, property law is

constituted around the notion of author as an individual solitary and original creator. Those who do not fit into model of individualism are denied intellectual property rights" (Shiva; 1997:8) on the other hand Shiva maintains that "The usurpation of community takes place because the western legal system ascribes legal personality to individual and not communities and when communities assert for legal personality they are put into the bracket of corporations, that views them as individual entities where right are like individual" (Shiva; 1997: 8). Thus the crux of this tension lies in different perception regarding knowledge where as intellectual property right regime views knowledge as the creation of one person, Forest based communities see knowledge as collective and intergenerational and no body con sell or transfer resource which are common property of people and each generations is under allegation to safeguard it for the next. The concept of indigenous knowledge and intellectual system has no place in the present IPR system as knowledge is not the result of common practices, but that of individual mind based on scientific thought. What in effect IPR does it, that it recognize western knowledge as the only kinds of knowledge indigenous knowledge is regarded as unscientific in effect it leads to an emphatic denial of collectivity, collective innovation of people and also their collective rights. The tyranny IPR regime does not stop here, it goes beyond enclosing biological diversity or biological common and stops only at enclosing and encroaching the intellectual commons and cultural commons. The effect is knowledge becomes individualized in space and time The mechanism for

this individualization and fragmentation in that of IPR, as indigenous knowledge about biodiversity is first converted to a free access and then eventually monopolized and privatized by the instruments of patenting Biopiracy can therefore be defined as a process through which rights of forest based communities to their culture, resource and knowledge are replaced by monopoly rights of transnational corporations and North .It also entails injustice as the knower are pushed out from their own knowledge system. The vicious circle that patenting starts, first leads to biopiracy (an any one with little modification can file for patent) and secondly it also converts biodiversity based community knowledge into a private property. The phenomena in further exacerbated because patent regimes only recognize and provide validity to formal innovators and not to informal indigenous innovation. To stop the wholesale biopiracy of indigenous knowledge system, measures of protection and recognition of rights of communities should be inbuilt with in the legal system

Community intellectual property rights can be seen as a strong contenders against intellectual property rights regime because it will lessen the effect of Intellectual property regime, which in based on a total denial of collective innovation involves of people. Community right as a category of rights are in harmony with innovation of community, it advocates that copy rights, patens, trade marks should contain clauses on community based intellectual property rights as it is the only mechanism that will recognize the collective claims of community and will provide for protection and

conservation of biological diversity as well as cultural diversity, further more it well respect the culture and value system of communities. Community intellectual property right as a legal mechanism prevents biopiracy, commodification and privatization. It is also an effective measure to check the ongoing internationalization of commons that treats commons as an open access system because the essential tenets of community rights are of excluding the outsiders, who do not have any stake in biodiversities. "Traditional resources right" as a concept tries to bring together all the issues of rights that are concern of forest based community. In the context of patenting in maintains,"Maintaining control over knowledge and traditional resources (including tangible and intangible, scientific and intellectual resources) is a integral part of indigenous people's struggle for self determination (Protecting indigenous rights; 2001) BIOPROSPECTING - The other kind of encroachment on the rights of forest based communities comes through bio-prospecting. By bio prospecting we mean, "Identification of naturally occurring chemical in wild species, especially for medicinal purposes. In essence it means that "Commercial exploration of potentially valuable bio-diversity related knowledge assuming that prior to prospecting the resource is buried, unused and without value". (Vandana Shiva; 1997: 54). The value of traditional knowledge in the identification is of utmost importance. Species are fundamentally found in territories traditionally inhabited by forest-based communities and therefore is easily identifiable by them. Bio-diversity prospecting is latest onslaught on forest-

based community and there knowledge system as it entails expropriation, extraction and screening of biological diversity and indigenous knowledge for commercial purposes and for valuable genetic and bio-chemical resource. Bio-prospecting attaches heavy cost for these community as in relation to them it means denial of their collective rights and cumulative innovations. Due to the commercial significance of bio prospecting it raises serious question of access in equity because it identifies one group as the knower and also it abrogates rightful share of other communities. Bio prospecting becomes refined form of piracy as it legally claims all intellectual and bio-diversity related rights of communities. Thus principle of exclusion is inbuilt within bio-prospecting model as it creates scarcity because free exchange of biological resources within a community and between communities is not allowed. Therefore it is not the community's action that leads to the 'Tragedy of commons' but external interventions like bio-diversity and bio prospecting do. The roots of this usurpationt are due to flawed system of intellectual property rights. To correct the system community rights have to be placed prior to and made more fundamental to intellectual/individual property right regime, as it is on protection and survival of knowledge that their survival depends. Community rights offers a solution because it is predicated on acceptance of cultural practices and self determination within the ambit of state that will give communities autonomy to define their life, right to use and conserve the resource within the context of their cultural practices. Thus what community right model

envisages is a system of right that accept community and group rights, the notion being that rights are shared within a community.

INTERNATIONAL EXAMPLES OF LEGAL RECOGNITION OF COLLECTIVE RIGHTS

The international scenario exhibits a shift towards collective community rights in natural resource management. The shift could be attributed to the struggle for rights of self-determination, to safeguards their cultural life style and practices.

<u>Australia - Mabo ors Vs The State of Queens land</u> - The court put forth the proposition ,that rejected Australian land as belonging to no one at the time of European settlement. It accepted native title right. <u>Native title act</u> - 1993 created collective rights. It laid clauses for the recognition of native rights, interest and traditional customs. "The spiritual connection of indigenous people to the land and its resources is far more important a basis for ...... aboriginal people... The unique relationship with land is fundamental to the maintaining and continuation of their culture. The historic relationship is both deeply symbolic and practically related to their day to day life".

<u>New Zealand - Treaty of Waitangi Act - 1975</u> - Ensures that Maori Land and natural resource right are kept till perpetuity "exclusive and undistributed resource of the land, estates, fisheries, forest and other properties which they may, collectively or individually posses so long as it is there wish and desire to retain the same in possession"

United States - Native title to land was established under '<u>Johnson's Vs Macintosh 1823</u>' it is referred as 'locus classicus' in principle governing

aboriginal title. It is also the first case to recognize native titles to occupancy. Other case that held that indigenous people have unquestionable right overland was 'Cherokee natives vs. state of Georgia'.

Canada- Re Paulette et al vs. registrar of titles 1973 - put forward that determination of legal aboriginal title to land are based on historical usage and occupation of land, since time immemorial. "All indigenous communities have legal title to land, if they are in occupation of that land prior to colonial entry in to areas".

Latin America - Brazilian constitution 1988 - gives recognition to collective rights, intellectual collective rights and control of access of biological resources. The constitution recognizes that indigenous communities posses juridical rights in their own area, which is an independent right. The constitution further gives rights to usufruct and real estate, right to communities to refuse access to traditional knowledge and gives communities right to file patents.

Legal Recognition in India - Community control has been the leit motif of traditional resource management practices in India during pre-colonial era. Forest based community-exercised occupancy right over land, forest, fisheries and water resources. The fundamentals of collective rights were inextricably linked with cultural and social structures of Indian society. The coming of British in India is seen as water shed in changing relations of people with forest and degeneration of community right and traditional norms of community. Post independent India continued with the legacy of

70

its predecessors as the political and economic elite relied on the traditional weapons of usurpation and appropriation.

Today communities are demanding control over the resources which they informally have but Indian common law and jurisprudence until very recently did not recognize it "The collective ownership has therefore stayed alive in communities but not in national legislation, despite significant trends evolving in the direction within international counter parts. At present the role is one of undermining community rights Vis a Vis individual rights and the rights of transnational corporations. (Shiva; 1997) The 1996 Panchyati Raj extension to scheduled area act (73rd and 74th amendment 1996) signifies radical shift in the direction of common law jurisprudence. It can be perceived as tentative steps towards community right regime. As the concept, of self-rule is implicitly present in it. The act recognizes panchayat as the basic unit of self-governing and democratic functioning at the level of community. It also recognizes village control over commons. Gram Sabha's has been endowed with specific powers, which include management of community resources, resolution of disputes within community. State legislatures are required to make laws accordingly within a period of one year and such laws should in consonance with customary law, social, religious practices and traditional management practices of community resources. The act also accepts the tradition of people and their cultural identity. Section IV (A) states that state laws and Panchayat Laws should be in consonance with the customary law, social and religious practices gives

tacit recognition that community resources are not only economic issues but are entwined with cultural identity of people. Section IV (D), "Every gram sabha shall be competent to safeguard and preserve the tradition and culture of the people, their cultural identity, communal resources and customary system of dispute resolution".

Under the new act the state accepts community right over forest but only that of minor forest produces, major forest produces are reserved for state. The panchayat extension to schedule area though not very explicit is nonetheless a significant step towards 'recovery of commons-both physical and intellectual'.

INTERNATIONAL LEGAL DOCUMENTS

International Legal Documents that give collective rights to indigenous communities over land, and cultural autonomy are:-

1. International Labour Organization, Convention 169 - Article 15, " The rights of people concerned to natural resources pertaining to their land shall be specifically safeguarded, the right include, the rights of the people to participate, use, management and conservation of their resources".

2. International Labour Organization, Convention 107 - "The right of ownership, collective or individual of the member of the population concerned over their land which these population traditionally occupied must be recognized".

Both these conventions specifically stipulate the fundamental rights of indigenous people to human rights namely the right to land which these populations have traditionally occupied, custom based laws, the right to health and life.

3. International Convention on the elimination of all forms of racial discrimination further gives collective right to communities to manage their traditional way of life.

4. United Nations draft on the rights of indigenous people, "All the rights of indigenous people have both individual and collective aspects, individuals are the beneficiaries of these rights but individual exercise them through participation in their collective institutions - tribal, social and political groups"

5. United Nations Educational Scientific and Cultural Organization - Meeting of experts on ethno development and ethnocide - Declaration of San Jose 1981, "The Indian People have natural right to recover the land taken away from them. This implies the right to natural and cultural heritage that these territories contain and the right to determine freely how it will be used and exploited."

6. United Nations Educational Scientific and Cultural Organization - Convention on the means of protecting the world cultural and natural heritage - provides for collective rights for the preservation of cultural heritage.

7. International Covenant on Civil and Political rights of indigenous people (still in draft form) provides an array of collective rights including rights to biological diversity. (Appendix - II).

8. Earth Summit 1992-Agenda 21 (Chapter - 26) calls for establishment of a process to empower indigenous people and communities through measures that include -

    -   Recognition that the land of indigenous people and their community should be protected from activity that are environmentally unsound and that indigenous population consider to be socially and culturally inappropriate.

    -   Recognition of their values, traditional knowledge and resource management practices with view to protecting ecological sounds society and sustainable development.

9. Convention on biological diversity 1992 - is an international treaty for protection of biodiversity guarantee to individual states sovereign rights on biodiversity and patterns of utilisation. It recommends for a system of common ownership, the strengthening of system of local community management and biological diversity. It gives states power to negotiate over genetic resources. (Appendix - III).

CONCLUSION

Rights should aim at providing for human interaction and for this they should provide rights to individuals that are in harmony with social nature of human beings. The issue of group rights and individual rights should not be viewed as one being sacrificed for the other because there is a space that exists and can accommodate both individual and communities. Rawls in his 'Theory of justice' offers a way out of this when he lexically prioritizes the first principal that is 'Each person is to have equal rights to the most extensive compatible with like liberties for all'. Here foundational rights do have a priority over group rights. Clearly an equilibrium has to be reached which will be premised on the assumption that individual and community rights can both co-exist. The concept of individual rights does not mean that they are essentially opposed to group rights. "The whole discourse about community and individual rights can be made wholly consistent with the conception of human rights ideally communal in character" (Jones ; 1994 : 214). Hence pluralistic conception of right is required that operates within complex plurality. It will entail devolving rights to local levels, that is decentralisation and devolution. The essential ingredient for it may compromise unity of being, a relatively clear normative contents in short respect for a rich and vibrant ethical culture that should be reflected in discourse of rights. Bias towards anthropocentricity has to be replaced by bio-centricity which will be extension of compassion to all beings, but before that homocentricity ahs

to be achieved. To conclude we should hope that if" Nineteenth and twentieth century established individual rights, the twenty first century will shape the foundation by introducing collective rights" (Shiva ; 1997 : 12).

CHAPTER - III

FOREST AS A COMMON PROPERTY RESOURCE

"Being an Indian means living in the land with the animals, with birds and fishes as though they were your brothers, it means saying that land is an old friend and an friend your father knew............ we see land as much more than a white man sees it. To the Indian people land is really our life, without our land we could no longer exist as people, if our land is destroyed, means we are destroyed".

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Fort McPherson
(cited in Johnston; Kymblica(ed.), 1995:194)

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Social institutions are product of gradual historical evolution in which an ever-going interaction takes place between society and institutions. The result of such interaction is that each fashions and refashions each other.

Economic institutions are part of the wider category of social institutions, as they operate within a given political and socio-cultural milieu. Property being a social and economic institution, follows the same norm and rules. It is shaped and influenced by social institutions. In the case of property, its impact on other socio-cultural and political institutions had been immense and often more than other institutions' effect on it. Thus property being social in character has followed the same trajectory as other institutions and from this we can conclude that it carries with itself varied nuances as a consequence of impact of class, culture, societal relations and traditions. The moot debate that has taken place within the category of property has been centred around the kind of ownership ideal for a society – whether it should be public or private. To get a deeper understanding of

what such issues are it is crucial to understand what do we mean by property and how do we define it.

In common parlance, property means rightful possession that is not merely what one possesses but what one owns. Property therefore can be defined as right entitlement and privileges of individual or groups to use goods and resources. Stevenson argues that property exists in an object and it entails rights and duties for both property holders and non property holders alike, where there is absence of the category of rights and duties we can infer that no property exists (Stevenson; 1991). If a person has a right to property, others necessarily have a duty to respect that right. The duty of non owners here is not to infringe on the rights of owners/ owner. Thus property is exclusionary in nature, be it exclusion of individual or groups. It implies that certain things cannot be used in common, two or more persons cannot claim the same thing at one time. For example 'X' can eat part of an orange, 'Y' can eat another part of the same orange, but both of them cannot eat the same part that the other eats.

Rights in the case of property rights imply a claim by one individual or an institution on others for an act of forbearance, if this forbearance is not forth coming state can use coercive measures for achieving compliance. Claim in this sense means that if 'X' has a right to use of land, then 'Y' and 'Z' do not have the liberty to use that land, it also entails duty on the part of 'Y' and 'Z' not to use the land. Thus property rights can also be perceived as act that is instrumental in canceling other people's liberty to use. In this

case one mere claim is involved that is against any one who encroaches on 'X's land. In a nutshell we can conclude that property rights are those category of rights that are directed to safeguard right of possession and ownership which means exclusion of those from its benefits and use, who are not the owners. Two characteristics of property rights that are apparent are that it implies restrictions on others (non owner) and secondly exclusion of those from the benefit and use of resources who are not the owners. Rose Anne Devlin and Quentin Graphton define property right in terms of owners and non owners and their relationship with others regarding the asset in question. "Property rights provide a stream of benefit to owners (or users) and require that others respect the property rights (Devlin and Graphton; 1999:38). They further define property right as a 'right of individual or a group of individual to a flow of benefits from assets with at least a partial right to exclude others" (Ibid; 38-39). Egerston defines property right as a right of individuals to use resources (Egerston, cited in Graphton; 1999:39). Bromley and Cornea on the other hand have defined property rights as a right to a benefit stream that is "only as secure as the duty of others to respect those conditions that protect the stream" (Bromley and Cornea; cited in Graphton; 1999:38). E. Kula defines property right as an entire range of rules and regulations, customs and laws that define on appropriation, use and transfer of goods and services (E. Kula; 1994:42). All the above definitions of property rights make it apparent that property rights are those category of rights that an individual or a group has to use goods and resources.

A crucial aspect of property rights is the kind of goods and services over which property rights are established. This characteristic of property rights forms the basis of classification of property rights and regimes – goods and services over which property rights are held can be classified into two categories- public good and private good. A public good is defined as one which is not subject to exclusion and subject to jointness in its consumption or use" (Elinor and Vincent Ostrom; 1977:1). Rose Anne Devlin and Quentin Graphton define public good as a special type of goods or resources which is neither rivalrous or congestible and is non exclusive is called public goods. (Devlin and Graphton; 1999:41). Public goods are the those goods in which exclusion is not possible. Non rivalry means that use by one person doe not imply loss to other, nor does it have a negative impact on others from enjoying its benefits. Public goods are those category of goods that are for collective consumption and are jointly available to others in same quantity. Private goods in contrast to it are characterised by rivalry and excludability. Here 'A's gain is essentially 'B's loss. Exclusion as a characteristic of public good is the main defining trait, higher the degree of excludability, the more private control exists. Goods and resources can be further classified as depletable and non-depletable.

Natural resources as resources and services form a sub-category of public good as they have many characteristics of public goods but are not pure public good. The difference is mainly on account of 'congestibility and exclusiveness'. Natural resources are not like 'air', a 'pure public good'

were substractability and excludability do not apply. Natural resources as public good can be renewable as well as non renewable and here both substractability and excludability apply. Even if a good is renewable it does not in any way mean that the resource cannot be depleted. Forest though being renewable falls into the category of depletable resources because its regenerative capacity is very slow. We can infer from this that natural resource goods are public good but not pure public good.

PROPERTY RIGHTS REGIME

Property rights regimes denote patterns of ownership structure within property rights. The main concern of regime is with structures and pattern of ownership present over a resource. Property right regime can be defined as a set of common characteristic present in particular structure of property rights. Right regimes are product of historical, cultural, technological and institutional processes as well as uniqueness and specificity of what is to be governed. Property right regime is therefore not static but keep on evolving according to the circumstances. This becomes apparent when we examine various property regimes and by historically situating them it is found that community ownership was part of the traditional system but following enclosure movement, community right regimes changed. Four basic kinds of property right regimes exist- these are private right based regime, state right based regime, regime of open access, and community right regime.

PRIVATE PROPERTY RIGHTS BASED REGIME

"Private right based regime use market prices for access and harvesting over the flow or yield" (Graphton; 2001:505). In such a regime the ownership of goods, services and resources lie with an individual or a firm that has the sole right to extract resources, transfer it and exclude others from its use.

STATE PROPERTY RIGHTS BASED REGIME

The ownership and control of resources is under state, here the property right of resources are vested in government or central authority, the government has the power to delegate some of its rights to potential users. Within a state property right based regime different kinds of property regimes can co-exist as in the case of government giving rights to forest dwellers and fishermen, but these are generally in form of privileges and secondary rights. Thus there exists a possibility of co-existence of different property right regimes within it but it should always be clear that they are secondary rights. "The property right regime that emerges is at the forbearance of the owners of the resources" (Devlin and Graphton; 1999:76). State Property regime is not the result of evolution but the result of nationalisation of common land & private resources.

COMMON RIGHTS BASED PROPERTY REGIME

According to Stevenson, spectrum of ownership and management forms exist that range from open access to private property, for groups

common right based property right regime can be subdivided into open access regime, limited open access regime and common property resource regime.

OPEN ACCESS REGIME

"An open access resource is depletable, fugitive resource characterised by rivalry in exploitation" (Stevenson; 1991:9). It is subject to use by any person who has the capacity and desire to enter into extraction of it. The unregulated extraction has a deleterious effect, it also implies that open access system is marked by rivalry which means that A's gain is B's loss. Open access regime is a regime characterised by absence of rule. If any rule that governs it is that of ownership by capture, every human being has the right to capture and use the resources. The resource extraction is open to all and "every body's access is nobody's property" (Bromley; 1989 cited in Dadhi Bhavi;2000). And thus in reality no regime is in existence. It is a system that leads to depletion as there is no control or restriction on how much and how many can extract or consume.

LIMITED USER OPEN ACCESS

Second in the continuum, is limited user open access regime, it is an area of ambiguous rights and is most amenable to fall in the category of open access. What differentiates it from open access is that property rights are limited to number of users and is characterised by restrictions on number of users, but the distinction ends here. In open access as well as limited user

open access regime there is no limit on amount that is extracted and can be extracted. The other characteristic of limited user open access regime is that there is no restriction on the amount to be extracted. According to Stevenson members are 'Quasi owners'. The exploitation of resource can be carried out at any rate which is dependent upon individual or group capacities; danger of over exploitation is paramount. The regime can work well in small groups. It is dependent upon individuals or groups capacities.

COMMON PROPERTY RIGHTS BASED REGIME

Ostrom describes it as a "natural or man made resource system that is sufficiently large as to make it costly to exclude potential beneficiaries from obtaining benefits from its use"(Ostrom; 1990:30). It describes a natural resource or a facility which is commonly or collectively held/owned by a community that is identifiable and is accessible to all members of that community. The main features of common property resource is that it is subject to individual use but does not belong to one individual and secondly it is a free good/resource/service for the community or individuals within the community, but scarce in society. Legally Common Property resource refers to a distribution of property rights in a resource where a well defined set of users have a set of well defined but not necessarily equal rights to the use of the resource, while all potential users not belonging to the groups are excluded. Common Property subsumes a set of social convention, norms, legally enforceable rules and procedures for regulating use(Singh; 1994:). It points out that Common Property resource is not an open access regime as

there exists a well defined rules and is governed by these rules. Arnold and Steward define a Common Property resource as one that is 'subject to individual use but not individual possession' (cited in Dadhi Bhavi; 2000). Stevenson defines Common Property resource as a "form of resource management in which well delineated set of users participate in extraction of use of jointly held fugitive resource according to explicitly or implicitly understood rules about who takes how much of the resource" (Stevenson; 1991:42). To sum up we can define a Common Property resource as a resource that is not an individual's sole ownership. "Users have simultaneously ex ante (Prior to Capture) claim on any particular unit of resource" (Stevenson; 1991:43). Sole ownership of a particular resource takes place when it is in particular hands. Secondly it is held jointly by a community or a group of people and is accessible to all. It is subject to individual use but not individual possession. The other characteristic of Common Property resource is that well defined rules exist that need not necessarily be formal.

MANAGEMENT OF NATURAL RESOURCES

The most crucial debate that takes place in relation to property is whether common ownership or private ownership is ideal for a society. The problem with forests becomes all the more aggravated by the fact that inspite of being a public good, it shows rivalry in use and depletability and it is used in common. Added to this problem is the problem of conflicting claims on forest being made, one for environmental protection and the other claim is of

community as environment exists in time, place and humanity. It has communities attached to it and any kind of management to be just has to take into account the issues of equality, justice and historical claims of community, which is involved in resource consumption and management. Elionor Ostom perceives these claims as one of the dominant discourse of resource management and how these competing claims can be resolved and united without trading of the one for another (Ostrom; 1990).

MANAGEMENT PRESCRIPTIONS

Starting point of any management of resource prescription is Garret Hardins influential article "The Tragedy of Commons". Hardin in his essay using the metaphor of tragedy of commons envisages a situation where overgrazing in commons leads to a situation were "each man is locked into a system that compels him to increase his land without limits, in a world that is limited, ruin is the destination towards which all men rush each pursuing his own best interest in a society that believes in freedom of commons" (cited in Dadi Bhavi; 2000:203). The solution Hardin offers to avert such a situation is 'If ruin has to be avoided in a crowded world people must be responsive to coercive forces outside the individual psyche, a Leviathan to use Hobbes' term' (cited in Ostrom; 1990:8). Mancur Olson in 'Logic of collective action' takes Hardin's hypothesis further and comments that achieving common good is not the goal of self interested individuals. Heilbroner and Ophulus in 1973 came out with a more interventionist approach. According to Ophulus "Ecological scarcity in particular is seen to

engender overwhelming pressure towards a political system that is frankly authoritarian .... for there seems no other way to check complete overexploitation of resource Leviathan may be mitigated but not evaded (cited in Ostrom; 1990:8). Heilboner mentions that environmental crisis can only be averted by iron government. Eherenfield also extended the centralisation model and gave a call for external guidance and regulation by public agencies, government and international authorities.

On the question of how the 'Tragedy of commons' can be averted, three major streams of thought exist.

PRIVATISATION

The case for private property was put forward by Aristotle when be declared that "what is common to all has least care bestowed upon it" (cited in Ostrom; 1990:2). Locke further eulogised private property and sole ownership as he believed that private property as a form of ownership is superior to other regimes. To this end be says that every body has property in his own person a right that no one can take. Later it was argued that dilemma inherent in common property can be resolved by private property and to avert tragedy of commons privatisation is needed. Demetz argued for the importance of private property and believed that with an increase in population and demand common property will be replaced by private property(Demetz; 1967).

NATIONALISATION

Nationalization was prescribed by Hardin, Ophulus, Ehrenfield, Heilbroner. Hardin puts the case for leviathan as it will check the innate tendency of individuals to give up their individual rationality which is concerned with maximising one's own profit. For collective rationality Heilbroner recommended 'iron government'. Ophulus also prescribes to centralised form of governance. Inherent in nationalisation is the belief that national government uses the policy and long term planning and do not take into account individual gains.

INTERNATIONALISATION OF COMMONS

Though not very coherent set of ideas have developed around this model internationalisation of commons as an alternative was first talked about by Heilbroner who pleaded for action and control by international agencies. In this he supplemented Hardin's argument by maintaining that only an omnipotent state can handle the global environmental crisis that can be answered by a global leviathan (Bryant and Bailey; 1991). Vandana Shiva while discussing Biopiracy and Bioprospecting says that globalisation has further aggravated enclosures of common forests by enclosing rights of forest based communities(Shiva; 1997). Internationalisation of forest common makes biodiversity an open access system and the common heritage of mankind. It operates by patenting and claiming intellectual property rights over biodiversity knowledge system that has been evolved by communities. Chatterjee and Finges maintain that internationalisation of

commons means bringing commons under the aegis of international organizations. This mode of thinking has been pushed forward in Brundtland Report (Chatterjee and Finges; 1994).

PROBLEMS WITH NATIONALISATON & PRIVATISATION

Naionalisation as an alternative is mute about the problems of common resource as the danger of failure of externally designed system is always present, and as the whole bureaucratic structure does not take into account the local knowledge system. Bureaucracy gets alienated from resource as it does not have any direct stake in management. Further "The diffusion of management responsibilities among government department and a lack of clarity in defining responsibilities can make state based rights unresponsive to changes in the environment" (Devlin and Graphton; 1999:76) and result in open access regime, where limited open access common property regime had existed. State as an actor is not neutral, the state machinery works at the behest of certain interests, there exists a link between state and business elite which becomes very apparent in commercial logging operations. "The fact that forests are state owned does not ensure that exploitation is in public interest" (Devlin and Graphton; 1999:76).

There also exists an inherent continued potential contradiction between state's role as a developer and a protector of forest, environmental and equity considerations in hierarchy of preference has low priority and development has taken place at the cost of environment. Kanchan Chopra

elucidating this trend says that government at present time has become sole repository of planned exploitation (Chopra; 1990).

PRIVATISATION

As an alternative for better management of forests is predicated on the fact that privatization will guard the private lands and, will lead to internalization of externalities. What the approach overlooks is that there are goods and services that cannot be privatized. Privatisation of forests is not the same as privatising airline or shipping company (Ostrom; 1990). Here equity, equality and social justice have to be kept in mind and the solution has to be found with respect to them. Privatization jettisons these consideration, as it is built on the premise of exclusion, which in public goods will lead to social injustice and inequality. The other problem concerning privatisation is that actual process of dividing the commons into fragments of small landholding is very difficult and then the question remains how rights are to the distributed? Who decides on privatization and who will get the land? Usurpation of land by powerful elites is a possibility that cannot be ignored. Privatization by no mean necessitates that it will be environmentally benign as commercial interest after exploiting it to the fullest capacity will leave the degraded land. What privatization entails is accentuation of poverty, ecological instability and shrinking life space of forest based communities.

Both the strategies of nationalisation and privatization of commons for efficient resource management fail to take into account the interest of

communities who reside in forest areas. Both are preconceived on the falsified notion of environmental management and privatisation ignores equity and justice in natural resources. Preservation often leads to opposite consequence of aggravating resource use and exacerbating degradation either for individual or for state. One caveat that should always in borne in mind is that economic institutions and profit is not the end, the end is conservation and social justice.

COLLECTIVE MANAGEMENT AS AN OPTION

The metaphor of tragedy of commons that had held its sway for decades has lost its theoretical support due to clear demarcation and distinction between common property and open access regime. Hardin mistakes open access with common property regime. Common property resource management offers a solution that is non state and non market which offers a way out of problem, were both the state and market have failed. It thus tries to fill the gaps left by other alternative of resource management. Common property resource management involves a rethinking of economic wisdom and recognition of socio-cultural structure of society. What it entails therefore is a redefinition of change in property right system and priorities. According to Kanchan Chopra it is a 'contractual agreement between government and people, that has immense potentialities of benefiting the least well off in society (Chopra; 1990:119). The fundamental basis of common property resource management is to be found in cultural and social structures of society as common property.

Resource management in inextricably linked to traditional resource use system. Any resource management system to come within the rubric of common property resource management system has to fulfill certain characteristics. These may be implicit or explicit, formal or informal.

1. The resource should have a well delegated physical, biological and social parameters and these boundaries define what a resource is.

2. Group of users can be identified without any conflict as two kinds of people share relationship with common property resources-users and non users.

3. Presence of multiple users who extracts the resource.

4. Well understood rules and regulations and implementation should be easily possible as rule and regulations make rights and duties clear.

5. Users of the resources share joint, non exclusive entitlement to the 'in situ' resource prior to capture (Stevenson; 1991:43). In common property resources users have simultaneous (Prior to Capture) claim on any resource before they become sole owners after capture.

6. Clear demarcation from open access regime.

From the above-mentioned characteristics it seems that common property resource shares attributes in common with public good. The difference between the two arises from the fact that public goods are a type of service or good where as common property resource is a management methods. Common property resource also exhibits certain characteristics of private property, the similarity is on account of both having a set of users

that are delineated and well defined and both have exclusion as principle characteristic. Whereas in private property it is more severe, in common property resource, it is diffused and has rules and conditions. The similarity between the two ends here, private property means that the right to resource is vested in a legal-person whereas in common property resource rights are less defined. This characteristic of common property resource makes it vulnerable to falling into open access.

PRECONDITIONS OF COMMON PROPERTY RESOURCE

1. There should be minimal set of incentives that pulls people toward the resource and positive condition for participation exists (Chopra 1990, Ostrom 1990, Dadhibhai 2000).

2. Existence of common property resource in contingent upon the quality of relationship people have with one another, with other groups and development activities (Chopra 1990, Jodha 1986).

3. State's attitude towards common property resource is very crucial, whether the state's role is of benefactor or of neutrality.

4. How the community perceives the resource and the importance of resource in question – whether it is linked to livelihood of people or is of secondary importance. (Jodha, Wade 1986). If the good is of prime significance for group, the group will come out with strategies for its proper use.

5. Kind of relationship people share with the state, centralization as a process leads to the decline of common property resource.

Elinor Ostrom in governing the common lays down conditions for successful working of common property resources (Ostrom; 1990).

1. Well defined geographical boundaries specify those authorized to use it. The condition is the first step towards organizing a common property resource.

2. 'Congruence between appropriation and provision, rules and local condition' (Ostrom; 1990:90). Appropriation rules have to be restricted in time, place, technology and quantity of resource. These rules should be acceptable to community as a whole.

3. Collective choice arrangement should be present. The tendency of rules becoming rigid should be curbed and the arrangement should be tailored to meet local circumstances.

4. Monitoring and enforcement of rules with sanction against transgressors should be inbuilt (Wade 1986).

5. Rules should be such that they cannot be overridden by higher authorities.

6. Conflict resolution mechanism should be inbuilt.

7. Minimal recognition of right to organise "the right of the appropriation to decree their own institutions" (Ostrom; 1990:90).

Wade adds that success of common property resource is also dependent on the size of community (Wade; 1987). Smaller the community greater are the chances of its success. Elinor Ostrom further mentions that 'time and horizon determine the success and failure of common property resources

Individual attribute less values to benefits that they expect to service in distant future. Time and horizon are affected by whether individuals expect that they or their children, will be present to reap the benefits as well as by opportunities they may have for more rapid return in other settings(Ostrom, 1990). Another determinant of long standing common property resource is the kind of economic activity and physical security faced by users. "Certainty of future is important, when there is less for survival in the present future benefits will to traded off heavily (Ostrom; 1990:101). In this context the action of others also determines the long term viability of common property resource, if others are not very prudent in the use then those following rules will be tempted to overuse it. Norms of community also have impact on the way common property resource is perceived. The most important impact is the type and extent of shared norms will have on strategies available to individuals to do with level of institutional mechanism if opportunistic behaviour is acute,it will be difficult to develop long term common property resource (Ostrom; 1990).

Mcgean while analysing the viability of common property resource lays down three conditions under which common property resource fails and users do not co-operate.

1. When the perceived private costs of co-operation is more than that of private benefit of co-operation.

2. When users feel that their contribution is very small and their shirking or free riding will not be known.

3. When the assurance of other members to co-operate lacks.

Common property resource offers a viable alternative, that has the potential not only to halt the degradation of environment but also to addresses the issue of community, social justice and equity that are usually ignored by other models. The sucess of common property resource as a viable alternative hinges on what Ostrom call "social capital of shared norms" (Ostrom; 1990).

WESTERN CONCEPT OF PROPERTY

The euro centric concepts of property is based on individual ownership and that property has to be located with individuals. The situtedness of property was crucial. This individualization of property can be traced in the writing of Locke and particularly in Locke's ' treatise on property'. Property was perceived to be a human creation which is build or originates when human beings take or claim resources from nature through the use of labour. Locke further argued that capitals can add value to the barren nature and hence only those who own the capital have natural right to own natural resources. "A right that supersedes the common right of others with prior claims" (Shiva; 1997:10). The enlightenment ideas further went on to eulogise human beings innate capacity over natural resource and hence natural resource could be brought with in the domain of property structure. Industrial revolution gave further impetus to propertising forest and earth because now capital becomes the source of all freedom and this freedom is due to capitals. This very freedom leads to denial of freedom to the land,

forest and biodiversity as eurocentric notion of property has no place for property owned in community. Community ownership suffered further onslaught because community as a category was perceived to be regressive, that puts brake on individual autonomy The whole category of Common property comes into disrepute and people who claimed right over common are described as thieves and saboteurs.

The industrial revolution had escalated Europe's demand for natural resources, first as raw material and then as consumer goods. In their zeal to expropriate natural resources, which were till then under community ownership, colonial masters imposed the western concept of property and property rights. The western concept was based on individual ownership and written traditions, which was polar opposite of oral tradition of communities, where oral records were enough for claims on lands. Individual ownership in forest was not part of propertied land. Propertisation as a principle existed in the agricultural land that was also under dual ownership, one that was of Zamindars and other of the actual tiller. Paper or legal contract did not hold the kind of sanctly that was accorded to it in western tradition. Oral records that were inter generational, served as a claim on lands. Due to the absence of western records on common property like forest, the usurpation of it was achieved easily, thus with one stroke the colonial administration wiped out communal claims from forests (Lynch and Talbott; 1995).

By 19th century an Ominous doctrine came to predominate, which held that land that is under people who are not politically united in action

was to be taken as empty territory or 'terra-nullis'. The doctrine was framed by colonial powers to usurp and justify the usurpation of land that was under common property. The concept of "terra-nullis" became the main weapon to capture unsettled and unclaimed land. Land that was perceived by colonisers as unsettled was in reality settled land, but the problem was that it was not settled in accordance with western conception of property because it was held in common. 'Terra-nullis' also denied the intrinsic worth of colonial people as though populated land was taken as empty – and people who had it were taken to be invisible and voiceless. It further leads to emptying the land since it became empty of trees, people and biodiversity -of all the relationships that forests shared with people thus- making it barren. The concept of 'terra nullis' also came in conflict with the perception of forest based communities, for whom forests and land are not passive or empty. Land is conceived in their imagination as 'terra mater' (Mother Earth), earth is seen as a living thing and not barren and passive. "The colonial construct of terra nullis served two purposes, firstly it denied the existence of prior rights of original inhabitants and secondly, it denied the earth any innate value of regenerative capacity" (Shiva; 1997:10).

The other way to empty land from forest based communities was denying them the status of humans. This denial of human nature provided the moral ground for usurpation of lands and disinheriting them, thus land becomes empty of people as people are not humans and property is the right of humans. In a nutshell the eurocentric conception of property led to

dismantling of culture of conservation, sharing and caring. In such a schema, forest based communities notion of property, that is of common entitlement through usufruct rights and a heritage, a bundle of relationships rather than economic rights had no place.

FORESTS AS COMMON PROPERTY RESOURCE IN INDIA

Commons remain an illusive concept despite its widespread prevalence. The problem of what constitutes a 'commons' is aggravated when the task is of defining what commons stands for. Are they held by everyone in common? Is it for economic purposes or sustenance? Ivan Illich pertinently points out that the lexical problem is due to the fact that laws establishing commons were unwritten, there were not written because what commons represented was really too complex to be put in paragraphs (Whose Common Future; 1993). An appropriate exercise for defining commons can be initiated by asking what commons are? And what they are not? Commons provide security, sentence and independence, "yet it does not produce commodities, it is neither public nor private, neither commercial nor community collective ....neither a zealously guarded private plot nor a city park, nor it is usually open to all" (whose common future; 1993:8).

Forests as common property resource in India had emerged within a set of culture and value, where economic reasons also played a crucial role. Chhatrapati Singh argues that the prevalence of common property resource in India had been a reality. "It is evident that till the end of last century and in all historical epochs before that, at least 80% of India's natural forests

were common property with 20% of them being privately utilized ....this extensive common property has provided base for non cash, non market economy. A whole range of necessary resources has been freely available to the people. This commonly available wood, shrub and cow dung have been utilized for cooking and heating, mud bamboo and palm leaves for housing, wild grass and shrubs as animal fodder, and a variety of fruits and vegetables as food" (cited in Shiva; 1988:83).

"The forests fulfilled the subsistence needs of all local communities, though institutions had developed to prevent unsustainable use of such resources and to ensure equitable access to them. Management was fairly easy as local structures were institutionalised through hierarchies, access was given to all though it was not equitable. Jodha contributes the success of common property resource in older times due to the prevalence of traditional and authoritarian structures as they carried with themselves social sanctions and legitimacy. While analysing common property resources in Rajasthan, Jodha points out that in earlier times structures and control of common property resource were in the hands of feudal lords that led to successful management. The prevalence of ownership did not mean that ownership was private. Dual rights existed in such structures – one of the actual user and above it, the overarching though minimal rights of feudal lords. The existence of unique property structure that, while accepting state ownership gave right of access and management to people made the property rights flexible and variable that made it easy to adjust to the specificities of

common property resource. The feudal lords and rulers in certain cases got minimal revenue (Nazrana) but this was not compulsory practice. The dual property structure over common property resource suited the local characteristics and did not lead to the alienation of community. Wade argues that the success of community managed forests in pre-colonial times was also due to highly decentralized form of governance where local authority had the power to look after the management of resources. These authorities could have been religious (preists), political (rulers, Jagirdars) and social (panchayats, caste panchayats). The successful management of common property resource in forest was also linked to economic needs, as basic needs had to be fulfilled within a given ambience. The other reason was the prevalence of minimum level of technology that ruled out forest exploitation on large scale as it will be naïve and a romanticized version to think of every community as conservationist. What is crucial here is the level and mode of technology that went into exploitation of forest. With the refinement of technology exploitation of forests increased not only in India but every where in the world, the reason though important in its own respect what is of primary significance is how forests were perceived in popular imagination. Forest based community saw forest as a sacred category as an extension of them in which they defined themselves. A holistic vision towards forests minimized exploitation through various mechanisms as sanctions against their unsustainable utilization.

The breakdown of common property resource practices in India started during Mughal times (Rangrajan; 1996) since bringing area under cultivation had higher benefits because of its resource generating capacity. Trend towards pushing forests was encouraged, though it carried minimum disruption due to abundance of forested land and forest based communities always had the choice to move deeper inside the forest. This pushing back of forest was a sporadic phenomena and uniform. The coming of British in India is seen as a watershed in changing relation of people with forest and degeneration of common property resources. The first step in the direction was change in property structure, whereby state became the sole owner of land, negating the customary rights of people. The reason for bringing a centralised and universalised property structure served two purposes, firstly it led to massive shrinking of forest so as to put it under cultivation and especially cultivation of cash crops, that meant higher revenue than agriculture. Secondly forests had to be cut to meet timber needs of British. Rangrajan also points out that propertising part was essential for British as there existed an ideological animosity with forest and forest based community. Forests were seen as anarchic and as land that has elapsed into state of nature (Rangrajan; 1994). Thus with the coming of British attack was not only towards forest but also forest based communities which aggravated the whole process of breakdown of common property resource regime in forest. The Forest Act of 1857 legitimised the process by declaring that government is empowered to declare any land covered with trees or

bushes as government forest and is authorised to make rules regarding its management. The subsequent forest Act of 1878 put the process of nationalisation of forests firmly in its place by creating the categories of reserved, protected and village forests. National Forest Policy of 1874 went further than old act by declaring that state can exploit forests for the purpose of augmenting the needs of state.

By 1870, 56,000 sq. meters (14,077 sq. km.) of forest came under the category of reserved forests and 20,000 sq. meters (51,813 sq. km.) as protected forest (Robinson; 1998:25). The whole process of expropriation of forest land has been equated with the 'enclosure of common' (Shiva; 1997) as propertising forests and bringing them within a single regime led to enclosures, these enclosure were not only physical but social, cultural and economic that in the long run meant enclosure of a way of life, a way of economy and the enclosure of self into a different frame (Whose Common Future; 1993). The impact of enclosures was that commons became a tradable object within a rapidly extending economy which in effect led to dispossession of forest based communities and their ways of management. Land was deliberately kept out of property structures so that everyone in the community can use it, as it fulfilled basic needs. This was perceived by the British as undeclared land and eventually became land of the crown.

The crisis of decline of common property resource in forest was aggravated by 'scientific management' of forests that led to change in total landscape. Monocultural plantation and artificial forest were seen as

redundant for communities, because these forests failed to meet the multifarious needs of communities. The needs that were till then being fulfilled by multispecies forests.

The post independent India continued with the legacy of its predecessors as the political and economic elite of modern independent nation state continued to rely heavily on the tradition of usurpation and expropriation. The rational behind it was that national interest is served by trading natural resources for consumer goods in international market. The process was further aggravated by Indian governments bias towards meeting the need of pulp and rayon industries. The consequence of it was exploitation of forest and propertising of forest continued. By 1951, the realm of state forest reached 679,590 sq. km. Of the total forest areas of 734,441 sq. km.(Robinson; 1998:25). The Forest Act of 1952 asserted that the fundamental concept underlying colonial policy was just and sound according to the policy 'the accident of village being situated close to the forest does not prejudice the rights of the country as a whole to receive benefits of national interest'. By 1960s there was a significant decline in common property resource, which was the result of interventionist policies followed by the state. The nationalisation of forest which the Indian state undertook was highly influenced by Hardin's Tragedy of Commons. According to Elinor Ostrom policies based on metaphors can be harmful and this has exactly what happened in the case of India (Ostrom; 1990). Excessive reliance on the tragedy of commons and solution of

nationalisation offered by Hardin has led to deleterious effects in forest management. "Nationalising the forest in third world countries has been advocated on the ground that local villages cannot manage forest so as to sustain their productivity and value in reducing soil erosion, in countries were several villages owned and regulated forest. Nationalisation has meant expropriation (Ostrom; 1990:23). State has undertaken ambitious development projects at the cost of forests. There exists an assumption that is misplaced that nationalisation leads to protection of public interest because state machinery itself can be biased towards certain interest which in the case of India has been referred by Guha and Gadgil as the 'iron triangle' (Guha and Gadgil; 1995). There exits nexus between state, business elite and bureaucracy that had become apparent during Chipko. In effect what nationalisation has done is 'created enclosures that have put commons into business (Chopra; 1990:134). She further elucidates on the role of state as sole owner of forest. The government role is that of resource maximisation, which means that it makes the people living in forest have no right to the forest produce. "Government has become a repository of planned exploitation" (Chopra; 1990:134).

The decline of common property resource was further aggravated by privatisation. It was thought that privatisation will benefit the poor. The outcome of privatisation had been entirely different. The consequence of privatisation was that the land that was supposed to reach poor did not reach them. 49-88% of privatised land ended up in the hands of non poor

(Hiremeth; 2001:46-47). The reason for it was that land which was given to poor was of low quality and secondly the poor lacked the resource that were required to manage it. Eventually the land passed into the hands of village elite. What was overlooked was the possibility that privatisation will also open opportunities for commercial interest, which will exploit resources and leave it degraded. The outcome of it was that it led to real poor collectively losing a significant part of resources for their subsistence. Common property resource also suffered decline due to interventionist and omnipotent role of state in defining better choices for people. It was not thought that individual rights can coexit within community rights. The state's undeclared assault on common property resource took new dimensions with social forestry programme that was hailed as one of the biggest initiatives to alter land use pattern. Social forestry lacked the character of social. Community woodlots was one of the important component of social forestry, though in reality it was meant for industries and served the interests of rayon and paper based industries. The National Wasteland Development Board set up in 1985 is yet another attempt to privatise and appropriate commons.

Thus the decline of forest as a common property resource has been a result of specific factors that has been due to the project of national elites to develop an industrial economy as well as universal process of enlightenment and industrial revolution.

REVIVAL OF COMMUNITY MANAGEMENT OF FORESTS

As present a policy shift is taking place world wide, that is recognising communities as the locus of all developmental programmes. The current resurgence of communities as flashpoint of forest management has taken place due to many reasons. According to Arun Agarwal "current valourisation of community should be seen as signaling a general loss of faith in theories of progress and promise of development (Agarwal; 1997:5). Disenchantment with the state and market as agents of conservation, the spread of democratic political systems, new historical and ecological research and contribution from scholars of common have contributed significantly to the revival of communities" (Agarwal; 1997:5).*****

1. **Development** - development used universal techniques and denied the possibility of traditional knowledge. The classical model of development is premined on a top heavy model that excludes communities from conservation. This approach does not taken into account that people have solutions. The top heavy model of conservation - development has led to depletion of resources, dispossessions of communities and exploitation of natural wealth. Then a need was felt for participatory model of development that are human centered and indigenous.

2. **Failure of State and market** - state in its conservation agenda depended on heavily centralised beneaunatic structure and also

due to its own compulsion of catching up with north relied heavily on natural reserve export state's behaviour in relation to environmental problem has been disappointing, rather than being, on actor with possible solutions to environmental problem the state has typically excarbated the problem (Bailey and Sinead; 1994). Vandana – Shiva says that. This process had the effect of accentuating the political and economic marginalisation of weaker gross root actors. The state ignoring grass root demands went with its own agenda of privileging economic development at environmental and equity cost. Where the state left market took own. 1982 crises heralded the rule of market 'market triumphalism' led to excarbation of resource marginalisation (Bailey and Sinead; 1994). There was a parlled growth going on for devolution of power, meaningfull participation, cultural autonomy and communities were the focus of all such development. Thus the ascending of community is a response of short comings of state and market.

3. **Historical - Ecological research -** Historical ecological research questioned the whole nature of 'wilderness' which rehed on coercive top heavy conservation. Researchers in present times have pointed out the falisity of notion of landscape untouched by human being and 'environmental histories are histories from which human cannot be excluded'

(Agarwal; 1997:16) according to the research the site of human and ecological histories are same. The nation of cultural leandscaping became important which emphasises that both human and environment interact offen in positive ways.

4. Common Property resource institution as on alternative to state and private management of resources (Mckean 1992, Bnromley 1992, Oston 1990) as such is a better alternative, as it emphasised that communities know region and environment best.

5. **Democratisation** - Horizontal democratisation has led to devolution of power and challenges the authority of state to manage people and environment. The process of democratisation is a response to the failure of state to link environmental conservation and social equity 'it is challenging the ability of the state as main promotion of society' is social and environmental interests' (Bailey and Sinead; 1991:177). "Community based conservation is anavoidably about a theft of power, now power is exercised, by which to lows authority and with what kind of resistance" (Agarwal; 1997:3).

The change in environmental concerns and the need to vest power in community founds its expression in the 1988 first policy, joint forest management resolution of 1988 combined with state resolution. These documents acknowledged a greater role for community in forest

management. "The national forest policy of 1988 envisages people's participation in the development and protection of present. The requirement of fuelwood, fodder and small products such or have building material, of the tribals and other villages living in and near presents are to the treated as first charge of present produce". The forest management lay down the involvement of communities as an essential element. This trend of community management in present got a further impetus from Indian panchayat Act extension to schedule area 1996 that provides a greater scope for community management of forest and people's participation. The Act mandates enact laws for scheduled areas that empowers the gramsabha to safequard the traditions customs of people, their cultural identity and communal resources.

Parallel development to policy shift were starting taking place with in forest based communities themselves. The1970's saw the gradual energence of community management of forest after a decline through two decades. This ascendancy of community management was taking place in a very different context which was of local assertion. The root of community assertion and initiative can be traced to 'chipko andolan' as chepko was mere than a protest it was an assertion of community control over forest resources. Chipko's history led to resurgence of community assertion. In the local context, communities and non government organisation have themselves initiated community management of degraded forests.

Factors that have led to local level resurgence of community initiative are - (FAO - Forestry paper 1998)

1. growing shortage of forest product and other forest output of value to user community.

2. Localisation and opportunities to assert local central and reasertion of authority.

TRENDS IN PRESENT COMMUNITY MANAGEMENT OF FOREST

Three broad categories of common property resource management of present exist in India (Sarin; 1996:169) which have been the result of the decades of assertion.

1. The first land of forest management has emerged solely on their own and as a response to hardships faced by community, due to the case of forest in satisfying basic needs. Local institution are crucial here in this type of forest management role of strong leaders, youth groups, elderly people and non governmental organisations often act as a catylyst. As the whole project has been initiated by local people, there exist some history of common property resource management in the region. Communities in such region have strong economic dependency on forest. This system is present in parts of Orrisa, Bihar, Rajasthan and Karnataka. This type of management is marked by lack of universality, local nuances and regional specification are inbuilt with in the management system. One

thing that is common to such common property resource management of forest is the prevalence of small communities, which is very conducive for negotiation and social control. In certain cases reciprocal agreement exist with other communities. Example of such land of management is of shamilat forest in Punjab that have been managed collectively by several communities of villagers.

2. In the second category are forest management groups promoted by state forest departments - in this comes co-operative societies of Himachal Pradesh, van panchayats of Utter Pradesh, West Bengal currently supports the largest of there programmes; the exist 2000 community forest management groups, protecting over 300,000 leaders of state forest land (Chhatrapati Singh cited in FAO Paper).

There communities were depended on forest from a long time but due to inach is legal sense their control over it was unauthorised. But defacts joint forest management had provided their a dejure as well as defacto status. Common resource management in collobarate with state forest department is also underway in Gujrat, Rajasthan, Haryana, Jammu and Kashmir and Madhya Pradesh. The role of forest department here is one of facilitator which is reversal of the old role.

3.   In the third category are community management of forest supported and sponsored by non governmental organisation and local government - here community works with in the rulic of macro developments progres. Village panchayats, mahila mandal and non governmental organisation state the responsibility of forest protection.

The present move towards common property resource in forest has been propelled by various reasons that are site specific and characterised by diversity in stategries, there

CONCLUSION

Common property resource management of forest affers an alternative to private property regime and state based regime as it is an alternative that encourages each agent to make self interested choice while at the same time respecting constraints forest as renewable. Further it becomes on act of neceenty when millions are directly depended on forest.

Private property regime in forest suffer from the drawback of creating and strengthening inequalities in society. Nationalisation is premised on state based property regime fails as it treats everyone in the same manner. Common property resources as an alternative strategy takes into account group and community claims, gives people a choice as to how to meet the objective rather than compelling them to meet these objectives. It in courages each agent to group to perceive forest as their own property and think about how to use it sustainably. Further it tries to fill the gap left by

privatisation and nationalisation at the front of social justice, equality and halting environment degradation. Common property resource management has in itself the potential of rebuilding a system based on ethos of social justice, equity and giving forest based communities the right that belong to them while also sentainality managing forest. However a caveat is needed no regime is perfect in itself, it is human being who have the onus of making it 'perfect' and 'just' therefore what is needed is imagination, political will and human power. In Elinor Ostrom words 'Social Capital' (Ostrom; 1990).

CHAPTER - IV

CONCLUSION: ISSUES OF JUSTICE

We are both constituents as well as observers of environment when we discuss the environment, we are discussing to some extent ourself... environmental justice is primarily about theories of distributive justice.
- *(Peter Wenz; 1996:248)*

The paramount importance accorded to justice in the present times, is primarily due to the ascendancy of new social movements that are the behest of hitherto marginalised social groups. These social groups find within the notions of justice the quest for right, liberty and equality for which they aspire. The present renewal of the idea of justice does not in any way indicate that it is a novel concept. The idea of justice can be traced back from the time of Plato, who defined justice as proportional Equality that, is equal should be treated equally and unequal unequally. Thus justice as a historical concept has been linked with the notion of balance and harmony in society. Focus of justice on balance and harmony becomes crucial in the context of environmental justice as, any kind of thinking in connection with community based conservation of forests relies on the notion of Harmony and Balance. More over, if community and ecology are separated, the notion reflects balance and harmony as core principle with in them. When Harmony and Balance are taken along with right, equality and liberty, they bring about a concept that is 'just' and strives for total justice with in any kind of society. According to Almond the notion of justice is highly crucial for

community, culture and ecology, because as a concept it is more concrete, tangible and firm than other ethical and moral concepts like "value 'and' goodness', as it brings with itself the notion of 'due', needs & deserts which are an imperative for any discourse on community based justice - were it implies an ethically and morally right course of action. (Almond; 1992: 15).

What is Justice - justice as a concept is linked with establishing criteria's about goodness and badness in any kind of moral, ethical and political judgment. According to Sarge Christopher kolm, justice is the central ethical judgment regarding the effect of society on situations of social entities with respect to each entities valuation of its own situation and for its own purposes" (Kolm; 1992: 438). The three-core concepts that are juxtaposed in justice are that of- right, liberty and equality. The synthesis of these three concepts become evident as justice implies joining together of values in fact in many instance it is perceived as an expression of rights. From this it can be inferred the whole notion of justice revolves around the conditions and space available to the individual and to a society, to pursue good life with their own conception of good.

Though the term justice is necessarily used in context of individuals, especially when one is dealing with formal justice. Its concern transcends that of single member of society. It has a much wider range and in an ultimate analysis its main aim is not the individual but with the society as a whole, because it is the society that determines the status, benefit, disadvantages that accrue to an individual.

THE AIM OF JUSTICE

The aim of justice is that, each individual gets a fair share in advantages accruing from organized social life and that each gets a common minimum, to reach a morally justifiable distribution of rewards and punishment. In a nutshell it will mean each individual getting what is due to his/her, the due here being 'just desert'. Just desert here can be material as well as non-material goods, in a society like freedom, rights, power, and wealth. The whole notion of 'just desert' makes, justice a highly debated and contested concept and therefore there has never existed an agreement on what is just and what is one persons due, and In the case of environmental justice what is one society's due. These disagreements are all the more aggravated when state comes into the picture, as what state does to one group or individual could be found by other groups to be unjust. The skepticism which 'just desert' gives rise to is in part due to the fact that principle of justice in all epoch have been dominated by majority and minorities are forced into a society that is not of their own making.

TWO NOTIONS OF JUSTICE

Two notions of justice exist-

i. Procedural or Formal justice - it is concerned with the manner in which outcomes are arrived and thus it's main concern is with rules that govern, human conduct and interaction. Procedural justice embodies the traditional precept of justice 'Live an upright life, harm no one and give other their due. The essence of formal justice is

retaliation and retribution. Inherent in it is the idea that, like cases are treated like and justice should be administered according to the rules and not in accordance with the personal whims. Formal justice is blind, as discrimination of any kind is taken up to morally oppressive and morally wrong. The idea that justice may require us to give extra to the disadvantaged or be particular and generous is absent, logically no idea of special treatment to groups or individual exists. As justice here is neutral and is not concerned with particularities and situation specificity .It implies that the case of community based justice has no place in it, were particularity are to be treated differently.

DISTRIBUTIVE JUSTICE

The principles of distributive justice are normative in nature and multifaceted. It takes into account what has to be distributed, the nature and subject of distribution (natural Resources, between whom and on what basis the good ought to be distributed). Distributive justice has to be accomplished "when the purpose of social entities oppose each other" and arbitration is needed between competing claims (kolm; 1992: 439).

The notion of distributive justice originated in the liberal paradigm, due to importance liberalism accord to liberty and equality. Liberty and equality being the reference point, idea of natural and social justice came with in the ambit of distributive justice and eventually leads to the idea of redistribution. When stretched further, it encompasses social as well as cultural justice. Thus the scope of distributive justice is wider and broader,

as its main concern is with allocation of goods and benefits and what are the appropriate criteria for differentiated treatment. "There is a requirement that benefits be seen as fairly received and hence it includes the idea of just and fair ways (Almond ; 1992: 15). It is with in this notion of distributive justice, the basic idea of environmental and community based justice are embedded, as here social justice as well as distribution of material as well as social wealth is undertaken. It also entails that state should follow projects and policies that are not deleterious to community and environment .Further more that policies do not lead to the alienation and marginalization of minorities from the state, and from the social situations due to domination and creation of new centers of power and hierarchies.

Different criteria's of distributive justice exist, but all these criteria are not in harmony with the community based justice system. This becomes evident on analyzing the various theories of distributive justice.

UTILITARIANISM

Utilitarianism essentially starts with the egalitarian premise, where each is to count for one and no one for more than one. Which in essence means that those actions are best that produce greatest benefit ,for the greatest number thus the state should choose those policies that are beneficial for providing maximum happiness. "There is an implicit majoritarianism in it as it belief that pain and pleasure can be quantified". (Kymblica ; 1994). Moreover it does not take into consideration that greatest happiness of majority will be obtained at the cost of greatest injustice to the

119

minorities. Thus it allows societies to make interpersonal transfer of pains and pleasures to promote the well being of all.

LIBERTARIANISM

Accords utmost primacy to the individual and it is hinged on Moral separateness of person. Since the individual is seen as a sole repository of all values, right inhere in individual and are 'a-priory'. Libertarianism attaches great significance to right to private property' and therefore any kind of redistribution is not permitted because redistribution itself is perceived as upsetting individual liberty that leads to a loss of individual freedom. Libertarianism seems oblivious of the fact that greater wealth itself can lead to restriction of liberty for others. The unflinching faith in individuals denies freedom to others, is not taken into account, thus it hesitatingly admits to power structures and hierarchy. The sole concern of libertarianism is with economic liberty, social and distributive justices are not accorded any importance.

STRICT EGALITARIANISM:

Egalitarianism is premised on the principle of strict equality, every one should have the same level of material goods and services. The justification for it comes through the notion that people should own equal respect. Equality in material goods and services is considered, the best way to achieve equality. The main flaw in perceiving egalitarianism as a principle of community based justice is that it does not take into account

differences and fails to acknowledge that people could have differences in choices and that equality could also be achieved by acknowledging differences. What in effect it entails is a homogenized form of life that is governed by one principle.

DIFFERENCE PRINCIPLE

Rawls uses the heuristic device of social contract applied to nature of justice. We are made to imagine our self in a society in which all agree with other peoples (who are with us in society) on the principles of justice that will govern us. What is decided by society in the hypothetical situation will be best defendable concept of justice. The two principle of justice that will be decided are:

i. Each person is to have equal right to the most extensive liberties compatible with similar liberties for all.

ii. Social and economic inequalities are to be arranged in such a way that both are (a) reasonably expected to be in everyone's advantage and in particular to the least well off (b) and is attached to position and offices open to all.

In the scheme of justice, the first principle is lexically prior to the second, that is, we cannot depart from the first to get more of second. Rawl's makes equal liberty and citizenship fundamental to any concept of justice. He links principle of justice with the idea of equity and impartiality, and maintain that just shares are not always equal shares. Justice according to Rawls is the Primary virtue of a social system and justice is arrived when a

problem is solved in a correct way. Rawls admits that society or an entity is marked by both co-operation and conflict. Conflicts is due to the reasons that people are not indifferent to the ways in which benefits produced by their collaboration are distributed and justice is achieved when there is a proper distribution of benefits and burden of social cooperation. Fairness thus becomes the fundamental ideas for Rawls he says that it is fair to have unequal shares of social goods, if the inequalities are result of choices made by individual and are not due to differences in social circumstances.

ENVIRONMENTAL JUSTICE

Environmental justice though comes very near to distributive justice, cannot be wholly categorised as distributive justice. The concern of environmental justice goes beyond, the concern of distributive justice. They embrace social justice as well as cultural justice. It is at this point that the theories of distributive justice fail to answer the call for a truly environmental justice. Theories of distributive justice have to be made more wider and holistic to take environmental and especially community based justice with in ecology in its concern. The whole agenda is therefore to move away from a majoritarian view of justice and take into account community, nature, minorities and cultural differences. Environmental justice which defines community based justice in forest resources, perceives justice as an all encompassing relationship, that means securing to all citizens and groups equal worth in society, in a way that he or she is not

threatened by political, economic and cultural groups which are in hegemonic position. It is premised on the belief that in a just society differences are acknowledged and respected. "Environmental justice can be defined as the pursuit of equal justice and equal protection under the law for all. Environmental statute and regulations without discrimination based on culture, ethnicity and socio-economic status" (Environmental justice : 2001:2) Peter Wenz says that the need for environmental justice arises when people's want or need exceed the means of satisfaction, concerning those things that are in short supply relative to the demand and competing claims made on it. These claims are primarily dominated and marginalised therefore it is concern with issues of who should rightfully get what? Here distribution is crucial not only" Among people who live in the same society and at the same time but also with people who live in different societies at the same time and between people of the present and the future" (wenz: 1996: 248) .It is true that above mentioned concerns of environmental justice are also the concerns of distributive justice, but they fail to answer the quest for cultural justice, which is essential as majority of communities share of harmonious relations with the forest due to the fact that it is internalised in their cultural outlook. Justice therefore, and especially environmental justice has to take into concern these societies/communities.

WHY THEORIES OF DISTRIBUTIVE JUSTICE FAIL

Utilitarianism as a criteria fails because it abandons the claims of forest based community, who are minorities and do not come into the

category of 'greatest number'. Further more it can lead to injustices as for example any development project and any kind of scientific forestry can be taken up by the spokesman of greatest number at behest of greatest number or in cases of 'National Interest'. If communities are being sacrificed, their way of life, conservation practices are dismantled, turning them into squatters, utilitarianism does not have a moral duty to come to their help. Utilitarianism as a philosophy of environmental justice fails to accomplish community based justice, due to its being silent about the claims of communities and not recognising essential differences.

Libertarianism as a theory of justice is in some instances diametrically opposed to the concept of environmental justice. Firstly individual are accorded highest place, atomisation of individuals is explicit in it. Communities do not have any space in the whole notion of libertarianism. If utilitarianism relies on the criteria of majoritarianism and gives majorities the right to pillage nature, Libertarianism shifts its focus to the individual, who being the sole repository of all values can decide on what is to be conserved, in which form and what is not to be conserved.

Egalitarianism on the other hand is quite radical as equality has to be achieved without acknowledging differences, if taken to logical conclusion it will mean homogenized way of life, which is governed by one principle. Community based environmental justice celebrate plurality and difference and in concerned with fair share and not equal shares, further more, " it doesn't take into account that people would like to have different bundles

that are in accordance with their choices". If the argument of egalitarianism is extended in the case of community based conservation, it will require uniform kind of rules and norms that will mean loss of plurality and respect for differences. Rawls difference principles cannot be appropriated as the prime concern is with the individuals and not community, community is merely an aggregate of individuals, he further says that a just society is " Based on self respect of individuals ,by the recognition of equal citizenship and not by membership in a cultural community (cited in Kymblica; 1985:367). Rawls concern with individual is overarching as he makes self prior to its ends (Sandel; 2000: 316). The treatment of individual is, one of being abstracted from particular identity. The quest for community based justice of any kind takes community and culture as its core principles, it is here that we need an approach that takes the notions of group equality as a serious concern because community becomes the locus from which conservation of forests starts. Therefore a shift has to be made for a paradigm that takes in account distribution that is not only materials and social, but also even handed

When dealing with communities (Carens; 1999:46). As the concern of environmental justice is ending of dominations of human on humans, majority on minority, dominant culture on marginalised cultures and lastly domination of non human nature. Murray Bookchin points out that "domination of human beings is historically as well as causally prior to the domination of nature" (Bookchin; 1996 : 155). And that "The domination

of nature by men stems from the very real dominations of humans by humans" (Bookchin; 1996: 155). The goal of justice therefore should be to remove hierarchies and dominations from society including the domination of people over nature. Thus it necessitate that rights in society be freely exercised, whereby individual and group identities, needs and dignities is preserved, fulfilled and respected in a way that provides for self actualisation and empowerment of communities. Community based justice and forest therefore can't be abstracted from the idea of community, as the idea of equity is inbuilt which requires the ideal of equal treatment and protection for racial, ethical and income group here environmental equity become crucial. The second concern is with "environmental classism" (History of environmental justice: 2001: 2). That is due to environmental policies that create consequences, which have disproportionate impact on low-income groups, population and communities. What environmental justice in nutshell stands for is ecological, physical, social, cultural, political and economically just environment.

Clearly a more nuanced approach is needed that is embedded in community and also take in to account social and natural justice. The claims of communitarian in this respect provide and alternative, when taken together with distributive and social justice. It stands for taking in account communities with conception of liberty and equality. It emphasis's that communities should be treated as an independent value and not derived from freedom and equality, because community is not just an aggregate of

member but is more than members who constitute it. "Communitarian argues" that "liberal politics of rights should be abandoned for a politics common good" (Kymblica ; 1992 : 309) and the aim of justice should be recognition of shared practices and understanding which will requires modifications of traditional principles of justice and rights. As such community become the source of justice which means that justice has to be conceptualized, within a space of shared understanding of a society and not a universal and a-historical principle. Walzer in this respect argues that quest for universal theory or justice is misguided, perspectives are isolated and no perspective external to the community exists, looking for isolated and positivistic principles of justice means stepping outside history and culture (Walzer; 2000: 330). Justice being a human construction cannot be made only in one way. " The Principle of justice are pluralistic in forms and the different social goods ought to be distributed for different reasons in accordance with different procedures, by different agents and this difference is result of historical and cultural particularism" (cited in Kymblica; 1992: 369).

The whole notion of justice that emerges requires 'situated' principles of justice.

1.   Justice should be contextualised within the space of shared understanding and should not be seen as a historical principle.

2.   Communities should have an active role in deciding contents and principle of justice that is, it should take in to account common goods and individuals rights both.

The role of state in the whole project of justice has to be not one of neutrality as traditional precepts demand but should encourage people to adopt conception of the good that conform to communities way of life while denouncing universalised conception of good. Michael Sandel and Alasdir Macintyre while emphasing embeddedness in community maintain that the whole notion of picking and choosing from different space and time is wrong and false because ,we as individuals cannot stand that from our social roles and ignore that "self is embedded in existing social practice". "Self is not prior to but rather constituted by its ends" (Sandel ; 2000 : 325). Our identity is defined by certain ends, that we did not choose, but have been discovered by virtue of being embedded in shared social context.

Caren criticising the role the state as one of " benign neutrality" towards plurality of vision about life, maintains that it is not possible for the states to be neutral. States itself reflects the majority values, whereby majority forms and modes of thinking become states policies. What states require is a "thicker approach to identity and culture" (Carens; 2001: 447). Justice cannot be achieved by hands off, approach to the question of culture and identity, out of

respect for equality and neutrality. Conceptions of justice have to be one of "even handedness" that is to treat people fairly. For this states has to regard them concretely " with as much knowledge as we can obtain about who they are and what the care about" (Carens ; 2001 : 50). Which will mean a renewed focus on particularity and an even handed approach to culture and particular choices. Emphasis has to be on immersion rather than abstraction, on sensitive judgments rather than on generalised principles. Because we not dealing with the universalised vision of good, but different conception of goods. Justice to be just here will require adapting practices of differentiated citizenship than identical formal rights. The conception of justice as evenhandedness implies that it is not fair to make people conform to universal goods. Fairness here will require " Balancing of competing claims for recognition and support in matters of identity community and culture" (Carens ; 2001 : 50). Abstracting individuals from the social situations is not the way out, particularities have to be given their place and appropriate weight.

Communitarian, with its varying nuances comes very close to the principles of community-based justice. But communitarianism in its extreme form is not acceptable to the environmental justice framework because though community is important and so is situated ness, but not at the cost of individuals. Environmental justice, within whose rubric community based justice in forest comes, affirms the intrinsic worth of

individuals qua individuals and also of communities. Here no trade offs are allowed. Self is undeniably embedded in community and in the case of forests this embedded ness is double - self is both socially and ecologically embedded, but this embedded ness does not imply that individuals do not have their own identity - yes, individual is defined by social circumstances that are not reducible to individuals but individuals are also not reducible to community. The Kernel philosophy of environmental justice gives due place to both individual and society because it is conscious that community itself can be very oppressive - this is what is implied when environmental justice argues that domination of human on human should end as well as domination of nature should end. Moreover communitarianism does not provide us viable alternatives in the case of individual and group conflict.

To make communitarianism conducive to community based justice in forest a synthesis is needed between distributive, social and communitarian perspectives of justice .

ISSUES OF JUSTICE

The issues related here are issues that deal with group justice, were forest based community form groups that are dominated and marginalised by majority groups this domination can be internal as well as external. The process of injustice are due to colonialism, imperialism (in early stages) and in the present times through globalisation, development and nation building.

The process of group marginalisatin of forest based community was initiated through industrial revolution that needed colonies to fulfill its

demands for raw materials " The history of first world has been grounded in racism, imperialism and colonisation. The first world stands on edifice of free land (extracted from indigenous people) free Labour (extracted from slaves and natives) and free men (white men)." (Bullard ; 1996 : 255). " From the very beginning domination and hegemonistaion had been the sub text of economic, political and ecological landscape, buttressed by the exploitation of both land and people" (Bullard ; 1996 : 255). The first sign of injustice can be found when contact of India with Europe began. Which was on the threshold of a new social order that led to commodification of natural resources by ascribing market value to it. Group control over forest became a contentious issue, with elite attempting to usurp right over forest. Gradually communal forest were converted in to the property of state henceforth the processes of "enclosure of common" begin (Shiva; 1997: 8) whereby the forest were snatched and groups became invisible. In the postcolonial period India embarked on the process of industrialisation. Analyzing the expropriation of forest. Barry Commoner a biologist remarked". There is no free lunch in the world" (cited in Guha and Gadgil; 1995: 13). Somebody had to pay the price for intensification or resource use. The cost was obviously borne by the forest based communities whose dependence on forests was total. "The root of global ecological problem lies in the disproportionate share of resources consumed by industrialised countries as whole and urban elite of the third world" (Guha; 1996: 228). The second type of injustice perpetrated on forest-based communities was

131

through western style development, which, was premised on capitalism. The root of development can be traced to enlightenment that was predicated on progress that meant moving ahead by destroying nature. The whole paradigm of progress and modernism led to disenchantment with nature, nature was to be sacrificed for progress. "Enlightenment behaves towards things as dictator behaves towards men. We know in so far as he can manipulate them" in this science played an important role that of ,giving universal validity to western style development which has close nexus with science was premised on displacement and disposition. Common become a commodity and raw material injustice and inbuilt within development as it destroys and usurps resource base of forest based community. Injustice is intrinsic to the western paradigm ,as it leads to dismantling of history, culture and destroying the relationship between communities and forest. Communities that have sustained forest become unproductive and redundant. Alveroz says ,that development is nothing less than a propaganda whose veneer hides a host of depraved realities, thus development become coercion, injustice and in the name of it people are deprived of rights and livelihood. Justice demands, here equitable distribution and use of natural resources and freedom. For the third world it involves the whole sole questioning and restricting of development. We have to go beyond the very basis of science and development, as they are not universal categories. An alternative community based model of ecological development is needed that embodies a full range of values (social, cultural

and ecological) and should replaced existing centralised and insensitive development. It should give priority to local needs and subsistence requirements, financial recognition should be given to local communities who manage forest in a way that maintains environmental survival and means that privileging the omnivores should be stopped. A new agenda of participatory democracy is needed that should be supplemented by opportunities for people to decide on development issues. This will entail giving them power to decide on what they want. The new model of development should recognise local circumstances and explicit recognistion should be accorded to the fact that development means different things to different people. For this development has to become top down and the dictum that should guide it be that -we are people, we have insights that are to the conducive to whole process .It should work on the assumption that people have right to be informed and has to take into account rights and obligation. This development would mean bringing people close to the processes of the development and to see them legitimate actors in economic process. (Who have the capacity to develop themselves) According to Vandana Shiva, the notion of development would entail a shift to survival economy that are sensitive to people, thus development becomes linked to expansion of democracy as only by widening the notion of democracy, equality and dignity will development be true . It would also in effect mean granting full recognition of right to life in all segments of human society. d:ncluding those large number who do not produce and consume within the

market and who are treated as dispensable by the logic of market" (Shiva ; 1991 ; 12). On the part of first world and urban elite it will require "The western man to give way to the ethos of renunciation and self limitation, in which spiritual and communal value play an increasing role in sustaining social life" (Guha ; 1996 : 287).

Social Development

Environmental justice cannot dispose of the question of social inequality and imbalances in social power relations. To think that community based justice could be attained without social development is wrong notion. "Whenever 'in-group' directly and exclusively benefits from its overuse of a shared resource but the loss are born by 'out group' the policy of conservation needs to be changed as conservation does not take place in isolation" it has to be supplemented by land reforms, local rights and sovereignty over natural resources. (Ghai and Pimbert : 1994) . Local right would mean right to self-development and the outer development would flow out from this self-development, which will lead to autonomy in social, economic, cultural and political issues. Autonomy here also necessitate that basic needs are taken into account.

Wilderness as Injustice

Environmentalism in the presence stage represents western idea of wilderness in conservationist ideologies, which abandon the question of equity and justice. The emergence of interest in wilderness arises due to the

integral characteristic of elite society and consumerist culture that wants nature to be preserved in pristine purity for recreational and aesthetic value. Deep ecologists that eulogieses the value of wilderness is a reflection of ecology as aesthetics. The whole philosophy of wilderness preservation has imprints of enlightenment as it further eulogieses the dualism between nature and man by cordoning off huge tracts of lands from human beings, for privileging urban elite. It sees nature as an object and human-nature interaction is not seen a something natural. This has adverse impact on security and lively hood of people living in an around forest. The wilderness preservation ideology reflects injustice that is ironically from with in the environmental camp. It neglects the claims of long settled and populated areas where forest based community have shared a balanced and sustainable relationship with nature. In ultimate analysis it leads to displacement of forest-based communities and uproots people from nature and culture. Justice here entails that forest based community be given the rightful claim in deciding about nature - human interaction. Conservationist strategies should provide links between local people and livelihood activities. Further acknowledgement has to be given to the fact that health and well-being of forest ecosystem and communities are interdependent- ecosystems cannot be regenerated without communities, if it is done it will lead to a further injustice. Thus it is necessary for conservationist approach to be premised on equity and acknowledge relationship between people and nature.

Eco-cultural Security

Eco-cultural security is used to describe a cluster of threats to indigenous groups, including ecological harms, human and cultural right violation and the continued effect of poverty, discrimination and disempowerment on cultural survival and political participation" (Litfin ; 1997 : 104). Eco-cultural security becomes the question of group justice, as the devalued status of forest based communities is due to the so-called 'neutral' role of government, that when analysed is not 'neutral' but biased towards majoritarian cultural and imposes it on minority cultures. This becomes crystal clear if we take into account land rights. The idea of propertising land, which has become institutionalised in political and economic structures of government, is nothing more than majority idea that suppresses minorities. Group justice here becomes the paramount issues, as there exists a strong majority bias towards minorities. The dominance of majority culture goes beyond economic dominance, it spills over to social and cultural field and the hegomonisation is total. This hegomonisation gets deeply entrenched as covertly forest based communities are excluded from the full membership and participation. The above mentioned processes requires and urgent re-evaluation of legal, political and social status of forest based community - full recognition of indigenous culture and human rights are fundamental prerequisite for attaining justice and eliminating the legacy of colonial imperialism and cultural chauvinism. The task of eco-cultural security becomes an imperative due to the onslaught by the forces of

globalisation and the fact that even majoritarian groups within the states can dominate minority group especially, in the case forest based community.

Eco-cultural security emerges as viable option as eco-cultural security goes beyond the protection of cultures; it takes within its ambit ecological destruction also. The mechanisms through which eco-cultural security can be guaranteed are through self-determination that implies control over ways of life, Right to pursue your own culture. Groups differentiated rights as mechanism will act as bulwark against majority monopolisation and facilitate the survival of communities by giving explicit recognition and representation to the oppressed groups and their culture. Culture become an important issue in ecology that has acknowledged by the Cobo report (U.N. Document 1986) "Cultural disintegration is compounded by the destruction of the ecology and habitat upon which indigenous groups depend for the physical and cultural survival ….. Depletion particularly of rain forest and pollution induced by outsiders jeopardizes the modus viviendi of indigenous people. The social nexus binding members of a group to environment is annihilated" (cited in Litfin; 1997)

Rights and Justice

The special rapporteaour of United Nations sub-committee on prevention of discrimination and protection of minorities in its report pointed out that " The denial of rights of the people to self determination and policies characterised by massive and systematic violations of human rights lies in the origin of the degradation suffered by the environment in there

territories and of the damage done to cultural heritage and living conditions of the population" (cited in Ghimere and Pimbert).

The historical process of usurpations of rights has been the subtext of imperialism. Due to the enclosures of forests for revenue needs, traditional rights of the forest based communities over land and resources were denied, in spite of the fact that forest based communities shared a historical relationship with forest. Any aspiration for giving justice to the forest based communities requires rights that guarantee livelihood security including right to local resources, local rights to access, usufruct security over genetic and biological resources. Territorial control and security are essential because that will make communities strong enough to resist usurpation of biological diversity crucial to their livelihood. Another arena where rights and justice have become crucial is related to encroachment of market and globalisation on genetic resource and biological diversity. Which rightfully is the property of forest based communities. The Piracy of genetic resources and knowledge regarding it is actualised through biotechnology and genetic engineering. Biotechnology uses the knowledge of forest-based communities for commercial purpose especially due to their medicinal value, that inhere in the flora and fauna. Forest based communities due to their links with forest have acquired knowledge about flora and fauna. The legal instruments lead to the unjust transfer of biological diversity from the community to the trans National Corporation, north and national elite. The transfer takes places through the instruments of 'Bio prospecting " and 'Intellectual

property right regime'. Bio prospecting as has already been mentioned is "commercial exploration of particularly valuable bio-diversity related knowledge assuming that prior to prospecting the resource was unused". (Shiva et al; 1997: 54) Bio-prospecting regime has different connotations for forest-based communities. For them it is expropriation and usurpation of the collective rights and cumulative innovations. Bio-prospecting model represents injustice as it is based on the principle of exclusion. The exclusion here takes place at two levels. At one level, exclusion is due to identifying one group as the knower or knowledge holder exclusively and on the other hand it means a contract where by intellectual property rights on the innovations are transferred from community to the corporation abrogating communities of any rightful share. The whole intellectual properties right regime implies injustice as it first deal with one community as sole repository of all knowledge, which is not the case as knowledge about bio-diversity, flora and fauna developed through interaction with different knowledge system and with the help of other communities. Thus any contract that is undertaken with one communities leads to the impoverishment for other communities Further more it leads to impoverishment within the donor and contracting community itself ,as all monopoly on resource and knowledge is appropriated by corporations. Thus bio-diversity which was freely available get out of the bound of the community which in effect lead to mass denial of access to knowledge. Here the claiming of total rights over bio-diversity is not only at a material level

but also on intellectual level - it divides and fragments the community and makes knowledge a private domain of corporations. The second instrument of injustice is intellectual property rights regime - as the terms suggest intellectual property rights are meant " To be the rights to thoughts, ideas, and information" (Shiva ; 1998 : 9). Especially regarding new invention and processes. It is sought to protect the invention by excluding imitators from the market. Intellectual property rights, becomes a mechanism to maintain to monopoly over commercial exploration. Vandana Shiva equates IPR with the second coming of Columbus, she says that at the heart of Columbus's discovery was the treatment of piracy as a natural right of the colonisers, necessary for the deliverance of the colonised. A the heart of patent as natural rights of western corporation is usurpation of rights of forests based communities (Shiva ; 1998 : 5). Through patent and genetic engineering new colonies are being created and carved out as capital has to look for new colonies to invade and exploit for its further accumulation " The new colonies are interiors spaces of plants, tribes and women" (Shiva ; 1998 : 45). IPR in its present forms is highly restricted and in equitable concept. It is biased in favour of urban national elite and trans National Corporation. The reasons being that it does not take in to account the commons and community rights and secondly it leads to devaluation of a forest based communities and their knowledge systems. Only that which can generate profit is considered knowledge and the knowledge, which is concerned with meeting physical and social needs, is denied the category of knowledge.

The moot question that arises in the whole issues is how can processes of bio-prospecting and intellectual property rights be made equitable and 'fair shares ' go to the forest based communities. The solution for this is by granting right to own and right to have authority over live processes. Intellectual property rights regime has to take into ambit community rights, which will entail giving communities intellectual property rights. Community intellectual property rights will provide communities with, safeguard to protect their innovations. Linked to this its gives communities right to local level evaluation of ecological and biological diversity. " The result of ecological valuation can be of direct use to the communities in defence of their knowledge, right of access and use of wild resources" (Ghimere and Pimbert ;) The role of state in this direction is one of preventing external actors from stealing the resources and stopping piracy of indigenous knowledge system. State has to be the facilitator of community life for which, it has to take in to account community values and space of indigenous people. In addition to this, effective legal instruments, availability of increased financial and technical assistance and establishment of institutions that are not top heavy is needed.

Justice and Knowledge System

The belief that there are different ways of defining reality was falsified by the enlightenment and its undaunting belief in science and western knowledge system. Western knowledge system is supposed to be based on rationality, universal truth and objectivity and thus is supposed to

be neutral, on the other hand. Indigenous knowledge is not seen as true knowledge due to its being untested, unscientific, subjective and localised. Moreover traditional knowledge does not have the stamp of science and modernity. The hegemony of science in knowledge is manifested in the authority attributed to it. The authority of science has become so powerful that it is the only valid claimant of knowledge (sic). Injustice inbuilt within this system of ascribing what comes under the parenthesis of knowledge ,as it reduces the people who have evolved their own knowledge system as non knower. Further injustice is done to the creators of knowledge due to the sharp distinction between the experts and non-experts. This socially created division accords power to small minority, who are seen as the repository of all knowledge. Transforming nature without giving a thought that it fragments and destructs the regenerative capacity of forest does injustice against the object of knowledge. According to Claude Alvaroz, The displacement of the alternative mode of knowledge is not a result of cognitive competition but due to the support and states development policies and programme that provide financial subsidies and ideological supports for appropriation and exploitation of nature (Alvaroz ; 1992 pp : 56). Robinson further says that "issue of subversion of knowledge system is linked to the question of power and whose control is paramount, it is western knowledge which by its own created sacred categories of objectivity hierarchises knowledge system. She further says that knowledge gets linked to power and authority. (Robinson; 1998: 41). Scientific forestry as a form of modern

knowledge has long established hegemony over local knowledge. The authority of scientific forest becomes power when exercised". (Robinson: 1998: 49). In India the authority of scientific forestry as the superior mode of knowledge is backed by the state, the institutionalised framework of forest department and international donor agencies. The result of power of scientific forestry becomes evident in the meanings and categorisation of vegetations - useful species are those that are fast growing, weeds are species which have no recognisable market value, but are important for subsistence economies becomes weeds.

The scientific forestry de-legitimizes subsistence forestry as subsistence forestry does not fit into the model of market value. Justice in context of knowledge system would mean regaining processes and practices and values of indigenous communities. It will mean regaining the knowledge that has been degraded.

Issues of Justice within community

Groups are not undifferentiated whole but association of individual with interest that differ to varying extent; so within such minorities are to be found internal minorities" (Kukthas; 1995: 236). There are groups with in groups that had concentrated social and economic power and are in a position to encroach upon the power of others within the group. There also exits cases were there is a possibility that groups within a community have opposing interests, therefore it can be said that communities are not homogenous categories. Viewing communities as a homogenous entities is

problematic because, community internally exhibits inequities and differences which are based on ethnicity, origin, caste, class, economic status, religion and occupation. These inequities create difference in capacities and willingness to participate on equal basis - here the concept of 'internal minorities' comes to the forefront as it focuses on communities that are marginalised by majority group within a community . The issues becomes all the more volatile when individual rights, that are basic in character - right to life, liberty and equality conflict with the rights of groups as whole. Can individual rights be subjugated for the sake of group or for the greater good? If not who has to be given primacy individual or groups, inner minorities or majority group? If we take, the case of conservation it is normally the poorest and most marginalised constituents within a group, that have acute dependence on forest resources for survival, but relatively better off and more powerful get the maximum benefits. In many conservation drives the entire population of low castes and minority tribes, with in the group are excluded (this is due to subversion of basic rights like right to life, livelihood and liberty) which leads to their alienation from the whole project. There are other examples where majority groups as whole dominate the internal minority groups, group that are relatively less powerful, as in the case of conservation in Shivalik Hills. Where there are two groups, who have stake in conservation of nearby forest - Moinwalli Banjaras and Jholuwal jats. Here the dependence of Banjaras is more on the forest than that of jats, but due to jats being powerful and historical resident of the area,

144

the benefits accrue to them. Other problem that has to be resolved within in intra group paradigm is that conflict between masses and elite within the group. In certain cases the interest of elite are opposed to the masses, due to the existence of nexus between urban elite and intra group elite. The result of such conflict of interest is that new power structures are created that are exploitative in nature. Gender inequalities though un acknowledged play and important role. In most resources dependent, communities' women do bulk of collection of fuel; fodder and non-timber forest products, yet they have no say in decision-making. Institutional mechanism are required that will make groups internally more justices oriented and equitable. One alternative that is there is that of proportional representation and making the presence of internal minorities in decision making mandatory.

The other issue that needs resolution is that how do we define a community, when community itself is not a homogenous entity. The issue becomes salient when question is of identifying the membership of group - what should be taken as the criteria of identifying the group? And who should be in the group? Historical relationship as criteria for group membership takes, the group to be those who are the early settlers or original settlers. Resources dependency as a criterion focuses on the fact that, whose dependency on the resources is more and whether a community is dependent on the resources of forest. The third criteria for identifying communities is that of traditional users, but in many cases traditional users are no more dependent on forests. The solution for identifying a group or a community is

thus not easy. Jayawickrane and Decosse maintain that the issue of who constitute a community has to be decided by taking the criteria of physical proximity, resources dependency, traditional users supplemented by stake holders criteria, which tells us which group are most dependents on forests. Linked to the question of identifying criteria for communities is the question of transference of rights ' Can the right which are accorded to the traditional resources users be transferred to the most dependent and needy groups? Unfortunately no clear solution has been in the offing.

Mechanism for Achieving Community based Justice approach in Connection with Forests. Any approach to justice that is sensitive to communities requires " Reparation to the earth and social justice for humans beings oppressed by the colonisation of their lands, bodies and heart" (Carolyn Merchant; 1996:21) it requires that human beings give up the possibility of totally dominating and controlling nature. What it calls for is re enchantment of nature, to treat nature as an equal subject, not an object to be controlled. That will mean "Partnership ethics in which human community is in a sustainable ecological relationship with its surrounding natural community, human beings are neither inferior nor superior to it. (Merchant;1996; 20). The first step towards creating a community based conservation, that is not only conservationist, but just require giving communities safeguards and changing their position form one being that of 'Fourth world' to that of equal citizens - equality here does not mean universality or homogeneity, that has been the main reason for

extermination, assimilation and dehumanisation of forest based communities. It will mean solving the paradox of democracy that "Makes some citizens more equal than others and equality of citizenship makes some people more powerful citizens. The solution for this paradox is to be found in institutional needs of explicit recognition and representation of oppressed groups" (Young ; 1997;267). In other words, providing for group differentiated citizenship. Kymblica gives the answer by ensuring that group rights be given to the minorities that will make them have the same opportunities as majority. According to Young, participative democracy based on rainbow coalition answers the call for heterogeneity and group representation, and is based on the idea that each of the constituents of the community affirms the presence of others, there specificity's, expression and aspirations. For this participatory democracy has to be predicated on the fact that there are groups and some groups are politically and culturally disadvantaged. It also needs to be acknowledged that each persons interest and point of view is as good as his own and need and interest of every one must be voiced and heard by others (Young: 1997). It should also be accepted that existence of community reflects different histories, experiences and perspectives. Kymblica says, that federalism can provide for community-based justice as it accommodates claim of self-government and group rights. Consociational democracy is another viable option as consociational democracy gives minority cultures, right to develop their

distinct cultural life an ability insufficiently provide by universal modes of incorporation (Kymblica; 1997).

One thing that is evident is that, democracy has to take into account various interests, without dominating them for such democracy whether it is consociational or participatory take into account various interests, which will lead to grassroots participation. Participation has to be built in any system that affect and governs people, as a strategy it will lead to realignment of political powers in favour of minorities. Grass root democracy is also crucial as it in an indictor of how much value a government attaches to marginalised people and communities. Local control becomes important in this context, but justice here does not end with justice for forest-based community as a group. A fuller notion of justice will take into account the question of internal minorities with in community. Intra community justice is crucial, as due to communities being relatively closed and hierarchical, communities themselves can be promoters and facilitators of in justice. Leslie green Points out that, internal minorities are doubly oppressed, this double oppression is due to their being oppressed by the outer majority and within the group by internal majority. Effect of double operation is denial of basic rights Chandran Kukthas (Green; 1995) offers the solution to the dilemma by giving individuals right to exit from the community - right to exiting may work in a cultural society but where culture becomes linked with livelihood issues right to exist is not a viable option as exiting is not easy. "It is risky, wrenching and disorderly to have to tear oneself from one's religion

or culture" (Leslie Green: 1995:270). The way out of this paradox a according to Kukthas is to give individuals rights that are inviolable and foundational in character and cannot be suppressed by groups " People have right as members of minority group, but members of the minority have rights as an individuals (Leslie Green : 1995 : 269) . The alternative seems a rational one because though it gives rights to individuals that are basic in character it does not see groups and individuals opposed to each other. Institutional mechanism for a democratic group can also be in the form of compulsory participation.

In conclusion we can say that shift towards community based justice in conservation of forest cannot come only by looking at forests, as an isolated category. It has to take into account group justice vis a vis majority that will mean, justice in development guaranteeing rights and safeguards, social development, empowerment, participation in decision making and guaranteeing group rights. Intra group justice will lead to an equitable group were internal minorities are not subjugated, oppressed or marginalised. The shift has to a shift that leads to " a new constellation of concepts, values perception and practices shared by communities which form a particular vision of reality that is on the basis of the way community organises itself. The shift will lead to justice will include, reclaiming the common forest, defending the common forests, re-claiming the community, re-claming vernacular knowledge, self esteem and re-claiming life itself.

APPENDIX - I

Traditional Resources Rights - Supporting agreements

1.   Human Rights - United Nations International covenant of Economic, social and cultural Rights (1966) State Parties - 137 (March 1998) United Nations International covenant on civil and political rights (1966). State Parties 140 (March 1998) Convention on the elimination of all forms of racial discrimination (1966). State Parties -150

2.   Right to self determination - United Nations International covenant of Economic, social and cultural Rights (1966) State Parties - 137 (March 1998) United Nations International covenant on civil and political rights (1966).

3.   Collective Rights   International Labour Organisation - 169 United Nations International covenant on economic social and cultural rights (1966) United Nations International covenant on civil and political right (1966) State Parties 137.

4.   Land and Territorial Rights International Labour Organisation - 169

5.   Prior Informed Consent - Convention on Biological diversity (1992) State Parties 175.

6.   Right to Environmental Integrity - Convention on biological diversity (1992) States Parties 175

7.   Intellectual Property Rights - Convention on biological diversity (1992) State Parties 175.

8.   Right to Cultural Landscape - Convention on the means of prohibiting and preventing the illicit export, export and tariff of ownership of cultural property (1970) State Parties 79.

UNESCO Convention concerning the protection of world cultural and natural heritage (1992)

9.   Recognition of Customary Law and Practices - Convention on
                                                    biological diversity (1992) State
                                                    Parties 175
                                                    International Labour Organisation
                                                    169.

10. Cultural Property Rights   UNESCO - Convention concerning
                                                    the prohibition of world cultural and
                                                    natural heritage.

Source:

APPENDIX - II
(Relevant Articles)

**United Nations draft declaration on the rights of indigenous people 1994 (
still in draft form)**

1.   Article 12 - Indigenous people have the right to practice and re-vitialise
      tradition, right to restitution against cultural, intellectual, religious and
      spiritual property.

2.   Article 25 - Indigenous people have the right to maintain and strengthen
      their own distinctive spiritual and material relationship with land,
      territories, forest and other resources which they have traditionally on or
      other wise occupy our used to uphold their responsibilities to further
      generations in this regard.

3.   Article 26 - Indigenous people are entitled to the recognition of the full
      ownership, control and protection of their cultural and intellectual
      property. They have the right to special measure to control, develop and
      protect their science, technologies and cultural manifestation including
      human and other genetic resources - seeds, knowledge of flora and fauna

      ...

      1.   Article 30 - Indigenous people have the rights to determined and
            developed priority and strategies for the development and use of
            their land, territories and other resources, including the right to
            obtain inform concern by states prior to the approval of any
            project effecting their land, territories and resources.

Source:

APPENDIX -III

Convention on biological diversity
(Relevant Articles)

Preamble -   "The State has the sovereign right over biological resources"

Article 3-   State have sovereign right 'to exploit their own resources, pursue their own environmental policies and responsibilities to ensured that activities within their jurisdiction and control do not leave or damage the environment of other states.

Article 8-(J) Subject to its National Legislature State have to respect, pursue and maintain knowledge, innovation and practices of indigenous and local communities embodying traditional life style relevant for conservation and sustainable use of biological diversity and promote their wider application with the approval of the holders of such knowledge innovations and practices that encourage the equitable.

Source: www.ciesin.org/TG/PI.RIGHTS/indig.html.

APPENDIX IV

The following list was adopted as the Principles of Environmental Justice at the People of Color Environmental Leadership Summit. This list was adopted on October 27, 1991, in Washington, D.C.

1.   Environmental justice affirms the sacredness of Mother Earth, ecological unit and the interdependence of all spaces, and the right to the free from ecological destruction.

2.   Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3.   Environmental justice mandates the right to either, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

4.   Environmental justice calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.

5.   Environmental justice affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

6. Environmental justice demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.

7. Environmental justice demands the rights to participate as equal partners at every level of decision-making including needs assessment, planning, implementation, enforcement and evaluation.

8. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.

9. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.

10. Environmental justice considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.

11. Environmental justice must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenant affirming sovereignty and self-determination.

12. Environmental justice affirms the need for urban ecological policies to clean up and rebuild our cities and rural areas in balance with nature, horning the cultural integrity of all our communities, and providing fair access for all of to the range of resources.

13. Environmental justice calls for the strict enforcement of principles of informed consent, and halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.

14. Environmental justice opposes the destructive operations of multi-national corporations

15. Environmental justice opposes military occupation, representation and exploitation of lands, peoples and cultures, and other life forms.

16. Environmental justice calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.

17. Environmental justice requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyle to insure the heat

Source: www.law.ecel.uwa.edu.acc/intelaw/indigenous people

153

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