

Deep in the world
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DOWN TO EARTH
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Deep in the woods

A murky battle
rages inside
India's forests
and court rooms.
Are the recent
eviction drives
misdirected at
forest dwellers?
And is
government the
real encroacher?
DOWN TO EARTH
presents a
reality check



SANTOSH MAHAPATRA

Writ Petition number 202 of 1995; Godavarman v the Union of India and others. This is the 'forest case' being heard in Supreme Court for the past seven years. With more than 800 interlocutory applications (IAS) filed, the case will dictate the fate of India's forests and an estimated 10 million indigenous tribal people who live in and off the forest. It has already produced several dramatic interim orders, the latest being in May 2002, when some state governments — Assam and Maharashtra, in particular — launched eviction drives against encroachers on forestland (see box: *It ends...*).

The eviction drive was in response to a circular sent by the Union ministry of environment and forests (MEF), dated May 3, 2002, to all states and Union territories (forest is on the concurrent list, and hence both the Centre and the state governments have a say). It set a totally unrealistic deadline of September 30, 2002, to remove all encroachments from forests, mentioning that the Supreme Court had expressed concern over the issue. The five-member Central Empowered Committee (CEC) set up by the court recommended measures several times stronger than those in the MEF circular. The panicky reaction of some state governments was as much due to the circular, if not more, as the fear of action by the Supreme Court.

The response was quixotic. Assam went on an eviction drive in the first week of May. The state's forest department used elephants to raze down hutments and homesteads on land recorded as forest. The second wave began in Maharashtra, where tribal families faced evictions from farms with standing crops. Scores of houses were destroyed, hundreds rendered homeless. In a country where it is difficult to ascertain who is an encroacher on whose land and at what time, there was a public outcry. In several other states, the level of exploitation of people classified as forest encroachers increased manifold. There were reports that bribes to forest officials climbed in Orissa. In Andhra Pradesh, Sakti, an organisation working for tribal people, approached the high court and obtained a stay on the state forest department's eviction notices to several 'encroachers'. It pleaded with the court to direct the state government to grant land rights and issue *pattas* for more than 31,000 hectares of land in reserve forests, which has been cultivated by tribals since before 1980. Across the country, civil society groups organised meetings and protests. The eviction drives came to a halt due to many reasons: rainy season and political compulsions (several states face elections in 2003).

How did a case, which began as an effort to curtail logging in the forests of the Nilgiris, lead to action against tribal people who have been wronged, historically, by the conflicting interests of government departments and arbitrary declaration of their ancestral lands as state-owned 'forests'? People, whose lands have been usurped but haven't been compensated. Clearly, the government had bungled yet again.



The battle for forest wealth: people and the government

It all began in 1995

T N Godavarman Thirumalpad, a resident of Nilgiri, had filed a public interest petition to prevent logging in forests that formerly belonged to his family. The court took up the matter as its own. A number of orders followed, not the least dramatic of which was a ban on the felling of trees in forests (see 'Logjam', *Down To Earth* March 15, 2002). The ban was widely viewed as the only measure possible to prevent rapid felling of trees due to the government-timber lobby nexus especially in India's Northeast, which was losing 31,700 hectares of forest every year, according to the MEF. But it caused hardship to saw mill owners, those employed in timber-based activities and small private forest owners.

So when did encroachment become an issue? The developments began in August 1999 from a problem facing the indigenous people and their forests in islands of the Bay of the Bengal. Concerned at the sad state of the Onge tribe, indigenous to the Little Andamans, and the destruction of the rich forests they depend on by the administration, three non-governmental organisations approached the circuit bench of the Calcutta High Court at Port Blair in the Andaman and Nicobar Islands. The organisations were the Society for Andaman & Nicobar Ecology (SANE) in Port Blair, the Bombay Natural History Society in Mumbai, and Kalpvriksh in Pune. They also filed an interlocutory application (number 502) in the Godavarman case in October 1999. They requested for:

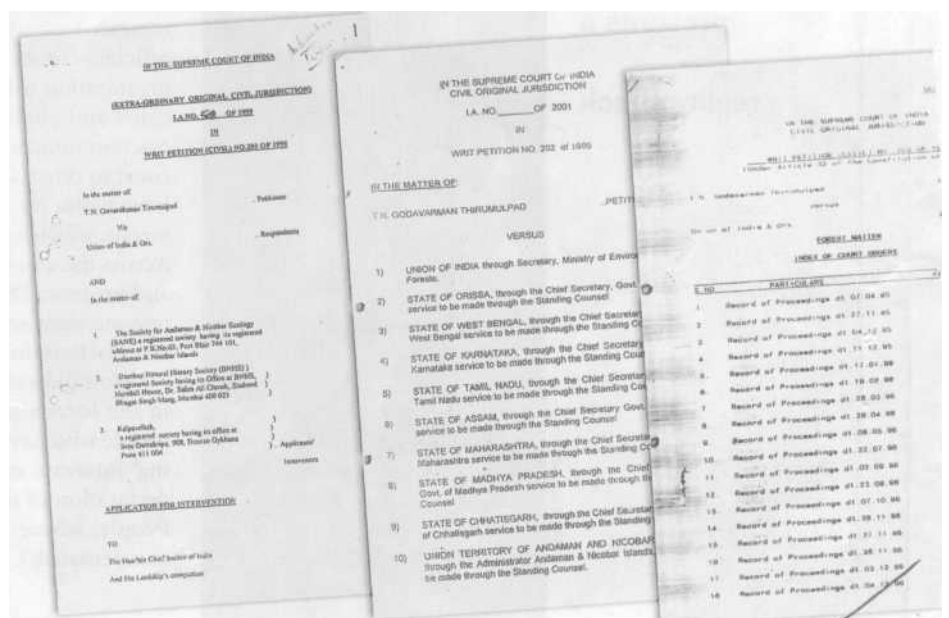
- a ban on felling of trees in the Little Andamans
- removal of all encroachments from the tribal reserve
- a ban on all mining or any other non-forest activities in the Little Andamans; and

- restrictions on construction of any road within the tribal reserve or in a radius of half a km.

Two years later, in October 2001, the court passed an interim order prohibiting cutting of any naturally grown trees. On November 23, 2001 Harish Salve, the amicus curiae ('friend of the court', a lawyer appointed by the court in public interest) filed intervention petition number 703 in the Andamans application number 502. Based on the recommendations of the CEC report, he said "one of the major reasons for decimation of the forests is the growing extent of encroachments". Describing the Andamans as an eco-sensitive region, he called attention to encroachments in West Bengal (in the Sunderbans), Karnataka (Western

Ghats), Madhya Pradesh and Chhattisgarh (Aravalli and Satpura region), Tamil Nadu (the Nilgiris) and Assam. The state governments, Salve submitted, were allowing further encroachments of forest in contravention of the Supreme Court's order of December 12, 1996, which restrained state governments from permitting non-forest uses of forests.

The states had done nothing to remove encroachment of forests after 1980, the year of the Forest Conservation Act and the cut-off mark for regularising encroachments (that is, grant the encroacher papers of ownership, the *patta*, of the encroached land). He asked the court to restrain the Union government from regularising any encroachments without the court's permission, and to direct the state governments to 'clear' post-1980 encroachments and prevent further grabbing of land. This overlooked the fact that the government's process of determining pre-1980 encroachment is flawed and that the government land records are commonly known to be incorrect (see box: *Take a guess*).



The drive against forest encroachers began in Assam on May 7, 2002. It reached a flashpoint during the eviction drive in Botahguli, where one person died of bullet injuries after paramilitary forces opened fire to control the mob. The issue immediately became political. The powerful students bodies of Assam challenged the forest department to act against illegal migrants. Assam Gana Parishad (AGP), the state's main opposition party, argued for protecting indigenous peoples' rights. Tribal bodies strongly opposed the drive, alleging that it targeted the indigenous people only. "Tribals are easy to target as they are not organised like the illegal migrants," said Satananda Choudhury, a Silchar-based environment activist.

The displaced people organised themselves into the Greater Guwahati Evicted and Oppressed People's Forum (GGEOPF), which called for a strike that was reportedly quite successful. "In many cases, the forest department demolished houses that had electricity and telephone connections, even after the owners produced valid documents in support of legitimacy of their construction," said Keshav Thakuria of the GGEOPF. Not all criticism wasn't political and polarised.

Encroachment becomes an issue

But people who understand the nature of encroachment in the Andamans say it is foolish to compare the situation in the islands to that in the mainland. There is no doubt as to who is an encroacher in the islands. They are tribal people who were brought in the early part of the 20th century for logging operations from what is now Jharkhand (mainly Mundas and Santhals). But they were employees of the forest department, and should have vacated houses after their retirement, which some of them haven't done. Moreover, the rise in the population of the islands has been rapid in the past ten years or so, mainly due to migration. The need to protect the forests that sustain communities like the Onge from a rising migrant population can hardly be disputed. But the CEC, in its effort to draw attention to encroachment in other eco-fragile areas, put such encroachment in the same category as indigenous tribes being labelled encroachers on their own land in, say, Andhra Pradesh or Orissa.

In an order dated February 18, 2002, the court asked the state governments to respond about the questions he had raised about encroachment of forests. On April 1, the court order noted that the states had replied: "The said responses are being attended to and a final decision will be taken and directions issued by the Union of India within six weeks."

The court didn't call for evictions

Within one month and two days, MEF issued directions in the May 3 circular to all chief secretaries, forest secretaries and principal chief conservators of forests of all states and Union territories. It asked them to summarily evict all encroachers of forests "not eligible for regularisation" by September 30, when the court was to hear the case. It was absolutely clear at that stage itself that it was impossible for the state governments to meet the deadline — and officials acknowledge as much. So why did they send the circular? They needed to show the court

There were those who pointed out that the government wasn't following the right procedure. Even a Congress legislator, Robin Bordoloi, now a minister, was critical of the drive: He said it should have been done after a proper demarcation of the reserved forests.

Then there were also unanswered questions about why the forest department allowed electricity connections to almost all the 'encroachers' in Botahguli. Residents say the Assam State Electricity Board (ASEB) and the telecom department didn't raise any objections. They have documents showing sale of reserved forestlands, papers allegedly provided by the forest department employees. They quote figures for the 'price' of land, and have paid land Revenue. They claim to have permission from the Guwahati Metropolitan Development Authority (GMDA) and the Guwahati Municipal Corporation (GMC) to build permanent houses.

As suddenly as it had begun, the eviction drive was suspended in June. "But the drive would continue until all forest areas are cleared of encroachers," said Pradyut Bordoloi, Assam's forest minister.

'Occupied territory'

| State | Area under encroachment (in hectares) | Percentage of forest area |
|----------------|---------------------------------------|---------------------------|
| Orissa | 47,300 | 1 |
| West Bengal | 16,940 | 2 |
| Karnataka | 91,000 | 2.8 |
| Tamil Nadu | 18,600 | 1 |
| Assam | 254,711 | 10 |
| Maharashtra | 73,000 | 1 |
| Madhya Pradesh | 152,000 | 1 |
| Chhattisgarh | 62,270 | 1 |
| Kerala | 10,040 | 1 |
| Total | 7,25,861 | 2 |

Source: Union ministry of environment and forests as quoted in the recommendations of the Central Empowered Committee

that they had taken action on the April 1 order. The ministry officials say they did not expect that there would be such a commotion over the May 3 order.

What really got the tribal activists' goat was the fact that MEF had, in 1990, sent a set of six circulars addressing the issue of encroachments and forest dwellers. They were:

- FP (1) Review of encroachments on forestland
- FP (2) Review of disputed claims over forestland, arising out of forest settlement
- FP (3) Disputes regarding pattas / leases / grants involving forest land
- FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry works
- FP (5) Conversion of forest villages into revenue villages

The spiral of corruption in Orissa

The tribal people in Kotagarh, a 'remote' block of Orissa's Kandhmal district, weren't actually surprised by the events following the May 3, 2002 circular from the Union ministry of forest and environment. Eviction threats are routine since 1981, when the state government planned a sanctuary in the 400-sq km reserved forestland of three districts: Kalahandi, Kandhmal and Raygada. This was following a Supreme Court order to expedite the setting up of sanctuary. Between 1982 and 1985, the Kandhmal district administration served notices to settle land disputes of tribal communities living in forest areas. The people were asked to convey their claims and objections before the district administration. Tribal communities, illiterate and ill-informed as they are, did not respond.

Political pressure ensured that the administration didn't pursue the matter. The tribal community had become apprehensive of getting displaced from their ancestral land. The forest officials started cashing in on this fear. The immediate impact was corruption. Bribes — from chicken to cultivated forest products to hard-earned money — became the norm and ensured that status quo was maintained. The forest department or revenue department came up with no steps to address the tribals' grievances.

In 1994-1995, the then tehsildar of Baluguda disbursed four decimals of land from the government leasable lands for the tribals in Kotgarh block. The intention: to provide a piece of land for the implementation of Indra Awas Yojna house scheme. The tribal people did not move out of the forest, which is their source of livelihood. Later, the revenue department allotted them pattas, making their settlements revenue villages. At present, the Kotgarh block record shows 39 forest villages and 70 hamlets out of 210 revenue villages. Out of 39 villages in Kotgarh forest boundary, only two villages qualify to be regularised on the basis of the 'preliminary offence report', says Pradip Naik, the tehsildar of Bariguda. However, the number of hamlets in Kotgarh block is likely to be over 700, according to the Pahadi Sangram Manch, a non-registered people's forum.

There are more twists in the tale. The forest department bars over 650 households inside the forest from agriculture. G Ranga Patra, Baiiguda's divisional forest officer, says the forest department is waiting for the forest settlement officer to complete the survey of total forest area: "Only then can the question of tribal eviction arrive." He says his department cannot act against the tribals holding pattas, but can confiscate their agriculture products. To the tribals, the equivocal stance of two departments means harassment. It is a common complaint in the area: inability to bribe often leads to cases of encroachment.

and settlement of other old habitations

- FP (6) Payment of compensation for loss of life and property due to predation/ degradation by wild animals

The problem with the May 3 circular, activists said, was that it mentioned only FP (1), ignoring the other circulars that dealt with the settlements of claims of forest dwellers. There were several reports of eviction notices to people who had been cultivating what forest department called forestland since before 1980, and were hence eligible for regularisation. In Melghat, there was a furore over the department carrying out evictions without a care for standing crops. That, too, in a region known for starvation and malnutrition among children. The Andhra Pradesh government, facing the prospect of the assembly elections next year, made it clear that it was in favour of regularising encroachments.

Civil society launches a campaign

Questions were raised in Parliament about the process of clearing requests of regularising encroachments, MEF felt the pressure from political leaders from tribal belts. The chairperson of the National Commission for the Scheduled Castes and Scheduled Tribes, Bizay Sonkar Shastri, wrote to the prime minister on September 6, soliciting his direct and immediate intervention: "You may consider directing the ministry of environment to take immediate step to resolve the disputes in tribal areas in terms of 1990 package in consultation with the commission... If this is not done the prospect of evicting one crore tribals is frightening which is as cruel as it is unjust." The secretary to the ministry of tribal affairs also wrote to the ministry reminding it to consider the 1990 circulars. Civil society pressure was also mounting. Prominent among those campaigning against the order were B D Sharma, former Commissioner for Scheduled Castes and

The most vulnerable people, tribals, are the largest tenants of India's biggest la



Scheduled Tribes (CSCST), Pradeep Prabhu of Kashtakari Sanghatna in Maharashtra, Madhu Sarin, a policy analyst on natural resource management based in Chandigarh and NGOS like Kalpavriksh. Email discussion groups suddenly became platforms for transacting information among civil society groups, which in turn started drawing the media's attention to the crisis.

All this resulted in MEF issuing a clarification on October 30, 2002 to all who were sent the May 3 circular. This made it clear that there was no change in the ministry's stand on pre-1980 encroachments that are eligible for regularisation. Asking the states to show progress on removing encroachments ineligible for regularisation, it made the politically correct mention of 'in situ' economic rehabilitation of such encroachers through livelihood opportunities from joint forest management.

But the clincher was the last line of the circular: "But forest land encroached for agriculture, building etc will have to be vacated and put to forests use in the interest of tribal communities." The concern for tribals came four months and 23 days after the May 3 order that led to exploitation of numerous people who never deserved to be kicked out in the first place.

While the MEF softened its stand and factored in concerns for tribal entitlements, the recommendations of the CEC continued to worry people fighting for tribal people's rights.

A controversial committee

The greatest criticism of the CEC has been its composition. It has three officials from MEF and two NGO representatives with a pronounced inclination towards wildlife protection (see

box). The amicus curiae Harish Salve proposed the names of the committee members. The way wildlife protection is practised in India leads to a complete polarisation and distrust between wildlifers and communities living in and around forests. The CEC'S recommendations on the encroachment issue, dated July 25, 2002, have attracted a lot of flak (see box: *Exclusive club*).

In particular, the committee's insistence that the date of encroachment (whether it is pre-1980, and hence eligible for regularisation?) should be determined by the preliminary offence report (POR), the first record of the violation of the

Exclusive club

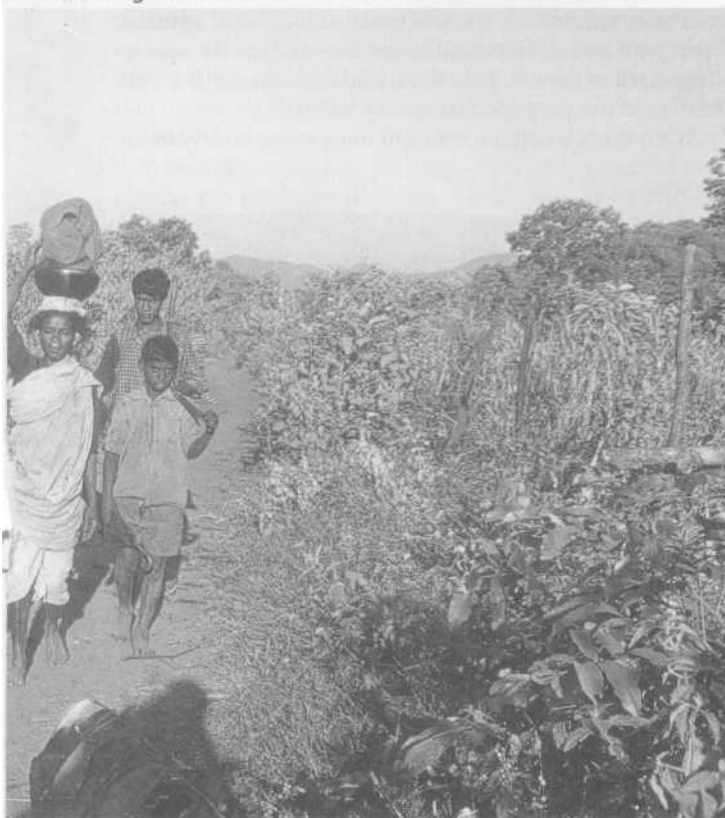
The Central Empowered Committee comprises only forest officials and wildlifers

- **P V Jaykrishnan, chairperson. Retired as secretary to the Union ministry of environment and forests on November 30**
- **N K Joshi, member. Additional director general of forests, Union ministry of environment and forests**
- **Valmik Thapar, member. Founder of the Ranthambhore Foundation; wildlife enthusiast; called the Tiger Man of India'**
- **Mahendra Vyas, member. Lawyer; wildlife enthusiast; was honorary education officer with what was then called World Wildlife Fund**
- **M K Jiwrajka, member secretary. Inspector general of forests, Union ministry of environment and forests.**

local forest laws, has drawn a lot of flak. It goes against the 1990 report by the CSCST entitled 'Resolution of conflicts concerning forest lands - Adoption of a frame by the Government of India', which states: "If the claims of the tribal people are to be determined on the basis of the record of the forest department or at best, record of other government departments, his claim is as good as lost. It is the fact of possession, of law, its cultivation and actual reclamation, in some cases by his ancestors which is the common knowledge of the village which is the basis of his claim. These facts may or may not have been brought on record. The reasons for this dissonance are many. For example, the official may not have visited the area or may have preferred not to take note of the cultivation, or may not have bothered to bring it on record and such like. They are of no concern of the tribal people. They cannot be expected to know what is here in government record. In these circumstances if the record were to be insisted, the disputes about land can never be expected to be resolved."

B D Sharma, a former bureaucrat of the Madhya Pradesh cadre, recalls a village that had been included in a notification of reserved forest. He went to the village and found out that the village hadn't been consulted before getting included in the notified forest. He sought the divisional forest officer (DFO). "The officer was honest enough to tell me that no official had visited the village as it was very far off. The village would have had no POR and would have been listed as an encroachment," Sharma points out. More than a decade after Sharma's report, it is clear that the CEC is yet to understand the

ndlords: the government

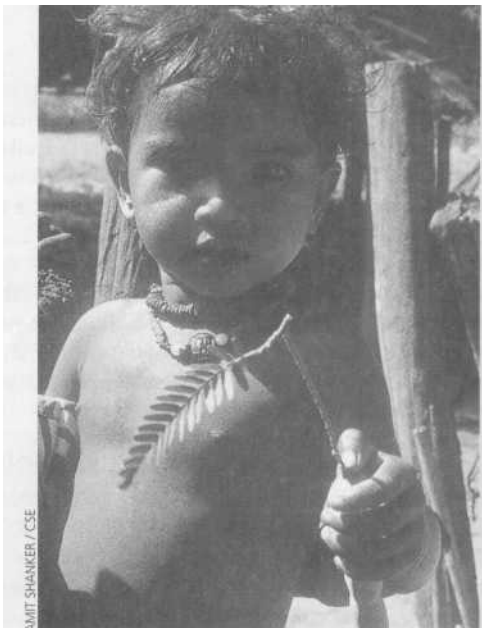


point he is trying to make. The committee's recommendation of imposing a fine of Rs 1,000 per hectare of encroached land on state governments also seems impossible, given the sordid financial state of most state governments. In fact, the forest case is touching on the issue of Centre-state relations as the implementation of the court orders is the responsibility of the state government, MEF is categorical in stating that encroachment and repeated regularisation of forestland is because of politicians' populism at the state level. M K Sharma, director general of forests at MEF, points out how regularisation drives in Maharashtra have coincided with the election years.

JFM is used as an excuse

Both the CEC and MEF have suggested a course of action that is confrontational. This contradicts the 29th report of the commissioner for Scheduled Castes and Scheduled Tribes, submitted in 1990: "There is only one way to resolve this tangle. The present law and order approach must be abandoned for good and a clear plan of action should be formulated on the basis of mutual understanding and goodwill between the government and the people within the frame of a clear long-term perspective. A beginning in this regard can be made with a sort of informal agreement between the people and the government accepting today's position as it is about the land with the people."

The only solution MEF has to offer is joint forest management (JFM). But there are problems. In Andhra, JFM does not recognise agriculture in Adivasi areas as a forest-related activity. It is aimed at developing and protecting forests as plantations of valuable forest species, claims the Adivasi Aikya Vedika (Tribals Unity Forum), a non-governmental organisation



AMIT SHANKER / CSE

Take a guess

Just who is an encroacher?

The central problem with the forest encroachment case is identifying an encroacher. A close look at the ground level reveals that a lot of people — though not all — classified as 'encroachers' are victims of a flawed land record system that they don't understand. Actually, very little is understood of how these people have been cheated out of their land. The biggest source of documented information on this issue is B D Sharma, former bureaucrat and Commissioner for Scheduled Tribes and Scheduled Castes. He now runs Bharat Jan Andolan, a campaign for tribal self-rule. Another source is Madhu Sarin, a policy analyst of natural resource management.

At the core of the issue is the fact that forest departments, when put together, are the

entity that tries to protect tribals' rights. It points to the example of the forest department granting the *podu* land of one community, which had refused to take part in JFM, to the vss of a neighbouring village. This happened in Lotharavariveedi village of Bodlanka Panchayat in East Godavari district. The organisation complains that the village that did not play to the forest department's tune had lost everything — its *podu* land, legal forest rights, and the income from JFM. In Andhra, the way MEF is implementing its 'solution' is worse than the problem. The vedika says the government had decided in 1987 to regularise more than 31,000 hectares of reserve forests, which tribals have been cultivating since before 1980. But before the lands were regularised, JFM was initiated in 1995. The forest department said all forestland under 'encroachments' were to be managed under JFM. This, the organisation claims, is a clear violation of the 1990 circulars sent by MEF.

While there is nothing wrong in using JFM to involve forest

Ultimate irony: why is illegal logging such a lucrative profession?



AMIT SHANKER / CSE

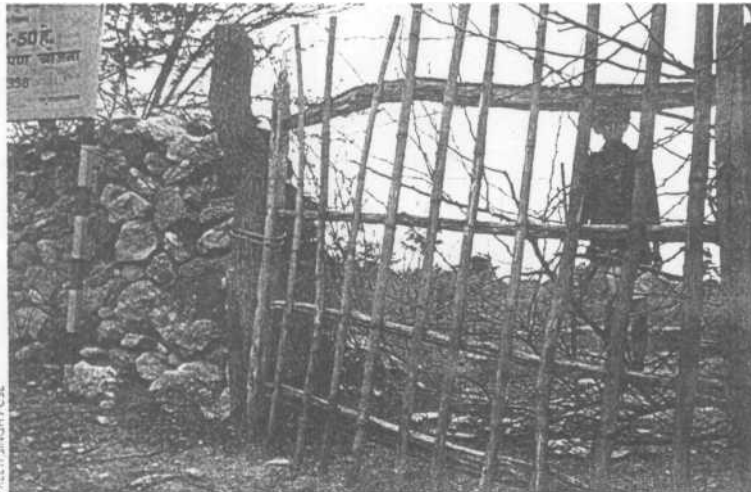
biggest landlords in India. They own between one-fourth and one-fifth of India's land. This is also the land that supports some of the most vulnerable people in India: tribals.

"Confrontation between the tribal people and the State on the issue of forest started after the State usurped the forests during the colonial period. It has continued even after independence with the consolidation of administration in the tribal areas and revenue-orientation of forestry management," Sharma writes. After India's independence in 1947, zamindari land as well as land under former princely states were nationalised through blanket orders without survey or settlement of rights. So or natural grasslands or large tracts traditionally cultivated by tribals were legally classified as state property, either as forest or revenue wasteland.

Tribal people had several customary rights over these lands. In the case of Orissa, these were either categorised as wastelands or 'deemed' forests, says Sarin. Another unique thing about Orissa is that more than half of the state's forest is under revenue department, though its protection is the forest department's job. Protected forests invariably get classified as non-forest areas in the record of rights prepared and maintained by the Orissa Survey & Settlement

Act. The revenue department then issues instructions for 'reservation' of government land for specific purposes in rural areas. The land records, survey and management of these forests are all in a mess. Sarin cites an example: surveys for revenue settlements of lands excluded lands sloping at more than 10°. This undermines the fact that several tribes have traditionally lived in hilly areas.

Says Sharma: "A village in Gadchiroli, Maharashtra, had been included in a reserve forest without anybody from the forest department going to the village. The divisional forest officer acknowledged that nobody visited the village as it was far away in the forest. It was recorded that there was no village there," he recalls. And then there are the 'orange' areas of Madhya Pradesh. The forest department marked certain forests to be handed over to the revenue department to be transferred to people living there — these areas were marked in orange on the map, hence the term orange areas. The revenue department issued *pattas*, but the legal status of such lands wasn't changed in the records. In 1987-89, around 60-70 per cent of 'encroachments' were by people whose claims had not been settled — people who should have been granted *pattas*.



Survival prohibited

dwellers in managing real forests, it is criminal to use it to deprive tribals the right to what is their land. Now, several civil society groups from across the country are aware of the forest encroachment problem. The shock delivered by the eviction drive from May to September in several parts of the country has woken up several people, forcing them to take note of a festering problem. Activist groups are getting more and more proactive and demanding long-term solutions. Several of them are organising public meetings and workshops to propose solutions.

The solutions seem tricky

Ravi Rebapragada of Samatha, an Andhra-based NGO that works with tribals on forestry-related issues, says all pre-1980 encroachments should be regularised in line with the 1990 circulars, and that the **FCR** should not be the sole criterion for deciding the date of encroachments. As for the post-1980 encroachments, he suggests settling all the land under occupation of tribals and dalits based on the Land Capability Classification followed by the Food and Agriculture Organisation (**FAO**). He says that the tribals in Andhra under-

stand this very well as FAO uses the term 'ploughable land*'. He acknowledges that the government is not likely to accept this. Sarin mentions that FAO does not include shifting cultivation lands in its assessments of forest cover in different countries, categorising them as forest fallows instead. It is the mismanagement by the forest department that has degraded India's forest, and now the forest bureaucracy is trying to cover for its follies by usurping the agricultural land of tribals because they don't understand the complications of the paperwork, Sarin says. B D Sharma warns that the tribals are increasingly getting angry and violent about being denied their rights.

With several states going to polls in 2003, the matter has become very political. Kerala's chief minister A K Antony, announced on November 10 that chief ministers of Congress party had resolved to seek an amendment to the Forest (Conservation) Act to facilitate distribution of forestland to landless tribals. The CEC has come under a lot of pressure to review its stand. It's the same pressure that made **MEF** clarify its policy on encroachment. And that's where the matter rests at present. The committee's recommendations are lying with the Supreme Court. It remains to be seen how the court will view them. And whether the committee will modify its recommendations.

Meanwhile, insecurity among people living in the forests grows. Take the predicament of Ghaneri Khar in **Bilaspur** district, Chattisgarh. The 75-odd families of this village have been evicted 12 times, arrested and lodged in the Central Jail at Raipur. "Each time we walk for eight days to reach our lands," says Dhasi Ram, mukhia (village head) of Ghaneri Khar. Nowhere to go, they return to their village. Only to be evicted again. Ram's story is also the story of more than 10 million people living in India's forests. Today their alienation is almost complete. •

With inputs from Nava Thakuria, Sopan Joshi and Satyasundar Barik