

4th ANNUAL WORKSHOP

ON

COMMON PROPERTY RESOURCES

AND THE LAW

*15th - 18th December 2002
Convent/on Centre, Jamia Hamdard, New Delhi*

organised by:

organised by:

Partners for Law in Development
F-18, First Floor, Jangpura Extension, New Delhi - 110014
Ph.: 24316832 / 33, Telefax : 24316833
Email : pldindia@vsnl.com

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INTRODUCTION TO THE WORKSHOP

Madhu Mehra, the Executive Director of PLD, welcomed the resource persons, the participants and the PLD partners. She shared a brief introduction to PLD, and discussed some of the earlier annual workshops. This workshop on 'Common Property Resources and the Law', is the fourth annual workshop. The participants of this workshop included PLD's partner organisations and the lawyers as well as other organisations working on natural resources. This workshop aimed at exploring use of law and legal strategies for asserting rights to natural resources within the framework of common property rights. It also aimed at creating space for sharing of experiences as well as perspective building.

Madhu emphasized that it was necessary to interact with other organisations working in the same field, to become familiar with their work and to examine the extent to which women's rights figure in the movement for people's rights over natural resources. PLD is particularly interested in exploring the inter-relation and inter-dependence between women's rights and natural resources.

She thereafter invited all the participants to formally introduce themselves, their organisations and the issues they work on. A list of participants and resource persons who attended the workshop is attached as Annexure I.

Thereafter, Shomona Khanna presented the workshop agenda which is attached to this report as Annexure II.

SESSION I: CONCEPTUAL FRAMEWORK OF COMMON PROPERTY RIGHTS (CPR)

The resource person for this session was **Dunnu Roy** from the Hazards Centre, Delhi. Dunnu began his presentation with the *Olga Telis case (commonly referred to as the Pavement Dwellers case)*, a public interest case which is landmark for its interpretation of the right to life under Article 21 of the Constitution. For the first time the right to life under the Constitution was held to include the right to livelihood, and that a person's livelihood cannot be taken away without due process of law. The court recognised that people live on the pavements of Bombay because their livelihood and shelter, and therefore their survival is linked to that pavement. They cannot therefore be removed without alternative arrangements for both livelihood and shelter.

Since then the right to life and livelihood has traversed a long and ironic journey, one that reflects the progress of judicial activism in this country from expansion to exclusion. In response to a PIL filed during the plague in Surat, the Supreme Court ordered the municipalities and nagarpallikas of all states to remove garbage, which was presumed to be the main cause of the disease. Thereafter in 1998 an engineer in Delhi filed a petition seeking contempt of court action against the municipality because of non-removal of garbage. In response, the Delhi Nagar Nigam stated that it was impossible to remove garbage because there are too many slums in Delhi. They further explained that slums could not be removed, because the government did not have the capacity to resettle these slums in accordance with existing government policy. Justice Kirpal, observed during these proceedings that '*giving land to an encroacher is like rewarding a pickpocket*'. This observation, although not a part of the judgment, was picked up by the government, and cited in the first paragraph of the Delhi Government Policy on Slums presented 16 years ago, to justify their position that there is no need to give land as compensation to slum dwellers.

Prior to the Emergency, the government policy was to give each family removed from Delhi, 80 sq. yards of land. During the emergency 8 lakh people were removed from Delhi and settled in the outskirts, and the land given to each family was reduced to 40 sq. yards.

Over the last 20 to 25 years, subsequent government policies have further reduced the area to 25 square yards, then to 18 square yards in 1990, and now it stands at 12.14 square yards. Last week in a PIL filed by the Bartan Nirmata Sangh, the court held that slum dwellers who have come to Delhi after 1990 do not have any right to rehabilitation, and therefore can be evicted without any alternate land. This decision has serious repercussions. Besides, it will be next to impossible to determine who came in, before or after 1990. This case depicts the link between rights and common property resources (CPR).

The existing law relating to CPR has existed since the British rule and the laws on it have all originated around 1860, such as the Indian Forest Act, the Land Acquisition Act, and even the Societies Registration Act. It is important to understand historically why and how this happened, why the colonial state needed to establish its control over such a diverse arena at that particular time. The British classified land, using the new laws relating to land revenue and forests, not on the basis of its use by the local communities, but on the basis of its capacity to generate revenue. These classifications were adopted by the Indian government after Independence and continue till today. After Independence, special protection laws for marginalised groups, such as the Civil Rights Act and the Protection of Scheduled Castes and Scheduled Tribes Act for dalits, a variety of laws for women, were enacted. These laws were all based on the principle of 'protection' of poor and marginalised. This continued, at least in principle, for 30 years after Independence. It was also a time when that movements for both reinforcing caste system and Hindu superiority as well as those countering it, such as the dalit movement, were born. This period also saw the emergence of voluntary organizations, social action groups and so on, quite different from the NGOs of today.

After the mid-1980s, however, the limited approach of protection came to be dismantled. The period saw the birth and the resurgence of the middle class in India, and an assertion of their interests and rights. Public Interest Litigation, that was designed to represent the interests of the poor and the underprivileged, came to be used to assert middle class rights, in the guise of social justice and environmental protection.

The context of Globalization has also had an influence. On one hand, it has opened the market and job opportunities for the professional and middle classes; on the other, it has also co-opted struggles of the people. After Independence people working for the poor and the underprivileged formed 'sangathans' of the affected people at the local level, like dalit organisations, farmers organisations, etc. But these institutions are being transformed. The sangathan that was formed for struggle for rights is now being facilitated to 'stand on its own feet', and the edge is being taken out of them. What were previously women's cooperatives are now self-help groups, the pani panchayats of before are being transformed into Water Resource Users Associations, and so on. The same process is happening in the NGOization of women's empowerment, and PILs. The strategy being used is to pump massive funds into these organisations. After slowly transforming them into NGOs, it is not hard to then dictate the issues they take up and the methods they use. Today such NGOs, who never have to stand for elections nor do they see themselves as accountable to anyone except their funders, have become representatives of civil society, while the poorest of the poor remain ignored. Government consultation with civil society is often with the NGOs rather than dalit and labour organisations.

It needs emphasis that the struggle against all these processes and forces cannot be individualized or headed by a single group or NGO- we all need to come together. We must be warned that as the situation stands today, we are on the losing side, all the five estates of democracy have become deaf to us- the parliament, judiciary, administration, media and now the 'civil society' or NGOs.

Discussion: The participants placed their varied experiences on how the term “community participation” is being perverted today. The term is being used to profit community elite, to the exclusion of the poor, who have anyway been left out in the last fifty years of ‘development’. The process of exclusion is happening in many different ways. Forests are being opened up to the market through leases, while state control over water is being reinforced through large and small hydel projects. In the name of conservation of wildlife, large areas are being cordoned off as sanctuaries and national parks. There is a need to examine whose rights are being protected under common property resources. We have to be very clear that protecting people’s rights over CPRs implies protecting the rights of the most oppressed.

Significantly, a large part of the money for these schemes comes from foreign sources. Projects that talk of community involvement have proliferated over the past few years, such as JFM, Swajal, and so on, with the World Bank playing a key role. Uttarakhand, for instance, has a very rich history of people’s struggles for rights over resources and a strong presence of formal and informal community organisations that manage resources. The World Bank has systematically targeted these local movements and associations and is setting up new structures that are answerable to it. Even private companies have begun to set up NGOs, such as in the Watershed Programme in parts of Gujarat. While these schemes espouse ‘community based participation’, they remain blind to class divisions within the community. A direct result of many of these projects is that NGOs have been turned into contractors, and once NGOs acquire a vested interest in this process, they compromise critical engagement with state policies.

Vijay Bhai of Adivasi Mukti Sangathana pointed out that the fragmentation of communities began during colonial rule, and has continued after Independence, under the garb of development. To illustrate, as part of the land ceiling process under the M.P Land Revenue Code, there are 53,000 hectares of land lying surplus that remains undistributed till today. But in redistribution of land to the landless or for purposes of rehabilitation of project affected people, the state continues to target village common lands, which sustains the socio-economic life of the community.

Today panchayats are being pushed by the state to do the same work as the government departments at one-fifth the cost. They are being encouraged to undertake micro planning, for the implementation of which the government takes no responsibility. They are being used as a low cost governance method and also as low cost contractors. While the Gram Sabhas have been given a lot of powers especially in the *adivasi* areas, they are seldom consulted when their forests or land is being acquired. The holistic control over local issues is disintegrating with the formation of myriad committees in villages, each dealing with a different aspect of village life, such as forests, water, education, animal husbandry, even policing. Each committee is answerable to a different department, and function independently of each other. To compound the problem further, the executive members of these committees have been given the status of ‘government servant’ under the law, and opposing them amounts to the offence of obstructing the work of a government servant. In this situation, it becomes next to impossible for the Gram Sabhas to work for people’s rights in a consolidated manner.

A further complication is that all issues in the country are being painted with the communal brush and the people are becoming divided on communal lines. The challenge before us today is to undertake massive political awareness drives so that we can unite people across issues and communities.

After all the participants had placed their views on the floor, Dunnu identified patterns emerging from the discussion. This, he felt, was necessary to plan a cohesive response.

Common property resources constitutes not only land, water and forests. There are three further constituents of CPRs that need to be included, because these are also under a systematic attack by the state. These are:

1. **Labour or 'shram'** - the discussions this morning have shown that the labour of farmers, workers, dalits, women, landless, tribals, is being appropriated by the state and being converted into surplus.
2. **Knowledge/ information-** Not only does the state exert control over information it generates, such as cost-benefit reports of developmental projects, but it now controls information that was earlier freely available in the public domain by converting it into private property or state property. Thus, whether it is the people's reports of Madhya Pradesh or the appropriation of tribal social practices that are converted into PhD theses, knowledge is being privatised. One way of regaining control over knowledge is to generate surveys, data, statistics of our own and publish them for open access.
3. **Institutions-** Beginning with the Societies Registration Act in 1860, the state has slowly gained control over associations and organisations at all levels, by bringing them under various surveillance and control mechanisms. Instead of *jan sangathans*, there have emerged over the years '*samaj sewi sansthas*' (voluntary groups), which were slowly transformed into social action groups, and which have today been largely replaced by '*swayam sewi sansthas*' or NGOs. This transformation has been designed to classify people and then appropriate their struggles.

In all the above mentioned six areas a pattern of control is emerging, which has some basic **characteristics**:

- a. Earlier a divide existed between the traditional and the modern. Under globalization however, the two have integrated beautifully. For example, the National Education Policy can talk about preparing 'generation next' for the ether age while promoting values of hindutva and narrow parochialism.
- b. The chasm between the public (the concept of state ownership derived from our country's socialist traditions) and the private has also receded and the two have merged. There is a public-private partnership and the powers have combined to form a tremendous force.
- c. Fragmentation of local organisations, groups, NGOs into issues. These organisations are now infected with such myopia, that they work on their specific issue, and reject linkages with other issues.

Two **questions** that emerge are-

1. **Rights language:** What does it mean? The Constitution guarantees a host of fundamental rights, such as right to life, right to clean environment, right to shelter, and so on. In real situations, there is often a conflict between these rights, which necessitates placing these rights in a hierarchy of importance. For example, for the middle class, right to a clean environment supercedes the rights of workers to livelihood. But for the adivasi community their right to livelihood is married to the right to a clean environment. Who then are the recipients of rights? Today individuals, user groups or collectives, corporations, country- all have rights. In a 'situation of conflict between rights, we need to be clear about the right in question and its recipient. The doctrine of natural justice demands that everyone affected by a particular situation has the right to be heard before a decision is taken on it. It includes all the affected parties in a given issue, as well as an impartial adjudication of all the different interests.
2. **Institutions:** There is a need to find a legal framework for these sangathans and institutions to enable functioning without state interference. In addition, these institutions need to be founded on principles of inclusion and non-discrimination rather than on narrow issues that exclude other marginalised peoples. Does the

organisation restrict membership on the basis of religion, caste, class, or gender? Is it restricted to one particular user group? Or does it reach out to all those affected in the larger process of appropriation? This will determine the form of the organization and its subsequent alliances.

Democracy as it stands today, is based on two constitutional principles that are supported by a web of laws and rules.

- I- The concept of ***eminent domain***, which essentially vests all power, authority and ownership of resources in the hands of the state. The state has the final power to determine what is and what isn't 'public interest'. This concept militates against the concept of people's ownership and rights over resources.
- II- The second is the concept of '***parens patriae***' which essentially means that the state is the mother and the father of all citizens. This concept has a feudal background, where the king or the local zamindar was the benevolent *mai baap* of all his subjects. The dangerous implications of this concept in modern democracy were demonstrated in the Bhopal case, where the state legislated that it would represent the victims of the gas leak in its capacity as *parens patriae* and then signed a settlement deal for a pittance. The state is increasingly abdicating its responsibilities to provide basic services as a welfare state, yet ironically it claims that it knows what is best for the people.

These two doctrines are the foundation of our Constitution and Democracy. Without posing a challenge to these two doctrines, we cannot get very far in our struggle for people's rights over CPRs. The further question is how to do it.

In response to the question of discrimination against women in the community, Dunnu stated that women's rights are inextricably linked to the institution of family across class, caste and religion. The family as an institution is inherently exploitative and oppressive, and needs to be challenged as it is the main site of women's subordination and unpaid labour. The struggle to ensure property rights for women is important, but it is far from enough. Until we address the question of what is the alternative to the family as an institution, we can make any number of self help groups for women, and yet reach nowhere on women's empowerment. The whole question is how to recognize it and bring it under law .

The session commenced with a panel discussion by two resource person, **Rohit Jain** from Sruti and **Usha Ramanathan**, Law researcher, and was chaired by **Arundhati Dhuru** of NAPM.

Presentation by Rohit Jain:

The struggle over land has been ongoing since colonial times, and after Independence only the form of struggle has varied. The British government undertook land settlement process based on the understanding of land prevailing in Britain where only the two categories of private land and state land were recognised. The community land that existed did not seem relevant to them, and therefore was not incorporated in the law. We inherited the British system, with all its limitations. As a result, there is no such category as CPR in law.

The approach to the issue of land depends fundamentally on how we view land. Do we see it as a commodity that generates profit, or do we see it as a complex of rivers, lakes, forests, etc. on which the poor depend for their life and livelihood. The fact is that the law treats land as a commodity, and this commodification has increased at a great pace in the last few years. The struggle on land rights therefore has three broad trends:

1. **Legal vs. Illegal:** The law treats differently those who have written proof of ownership and those who do not have such proof. Those without written proof are deemed as not having legal titles and are therefore encroachers. A large part of our struggle has been for regularisation of rights that were unwritten. After a sustained campaign, the government issued a series of 6 circulars in 1990 which form the basis for regularisation of tribal rights, but here again the law demands proof of possession. That the livelihood, social and familial roots of forest dwellers are intimately linked with that land is ignored by the law.
2. **Protection Existing Legal rights:** A connected aspect is the struggle for implementation and protection of existing laws that recognise rights. For instance, most states have made special laws to prevent alienation of tribal land to non-tribals, and one aspect of the struggle has been to ensure the implementation and enforcement of these laws. At another level, the struggle has been to prevent the amendment of these pro-people laws in an anti-people direction.
3. **Land as a commodity:** Large scale commodification and commercialization of land has commenced as part of the process of globalization, with land entering into the market as a commodity for sale. The land market is being opened up in a big way through acquisition, sale and lease of land for mining, contract farming, infrastructural development, real estate and housing societies, industrial estates, etc. The state is talking of changing the legal regime to facilitate this process, and several changes have already been made to accomplish this, including-
 - changes in the Land Acquisition Act, and especially in the R&R policy, both pending before parliament (however, no-one is being allowed to access these on the ground that they are secret);
 - New Agricultural Policy- the land reform policy is actually being turned on its head with many changes being brought in that allow large land owners to increase their landholdings;
 - Privatisation of water is taking place to such an extent that the state of Chattisgarh has sold a 22 km stretch of the Sheonath river to a private person;

- Setting up of the Forest Commission- this has ostensibly been constituted for resolving conflicts over forest land, but in reality the government wants forest land emptied of forest dwellers and freed up for paper mills and industry.
- The Highways Act, which forbids questioning the 'public purpose' of acquisition of land for building highways.
- Even the process of redistributing land to the landless is being perverted. The term *bhumiheen* (landless), earlier defined as person with less than 2 decimals of land, has been amended to mean that no male member of the claimant's family should own 2 decimals of land. This includes his father, brother, son-in-law and so on. This change in the definition now excludes the large majority of landless for no fault of theirs.

Today the concept of eminent domain, or state ownership and control over resources, is being used to the advantage of MNCs and large capital, including the World Bank and ADB, rather than the people. The Supreme Court of India has indirectly supported this process through many judgments where the concept of eminent domain has been upheld.

There are also some laws that purport to protect people's rights, such as the Panchayats [Extension to Scheduled Areas Act (PESA)], which promotes local self governance and tribal self rule. However, majority of states have not amended existing laws to bring them in conformity with PESA, or set up mechanisms for implementation, and as a result PESA remains only an expression of intent. In fact, there is a concern about the misuse of the concept of community ownership by transnational corporations who by direct negotiation with the communities can gain access and control over resources, and thus render the state irrelevant. The other question before the movement on land rights is how to integrate women's rights in the struggle. This has always been a very prickly issue, and remains unresolved, and in some situations even unacknowledged.

Presentation by Usha Ramanathan:

Some of the essential issues are - What are the rights of people and how do we identify them? Are they identified on the basis of legality or on the basis of legitimacy? Do rights devolve on only those who have the capacity to pay to have these rights enforced, and therefore have the capacity to produce written proof? Or is there something more to the question of rights? The law as it stands today provides rights to some people- those who can buy land, register it, or provide written proof of their ownership. Those who cannot provide the proof that the law requires, are deemed illegal.

However, one can also look at rights, from the perspective of *legitimacy*. We need to move beyond the limitations of the 'legality of rights' framework of the existing discourse, towards an understanding based on 'legitimacy of rights'. The absence of legitimacy leads to rightlessness, impoverishment, conflict of rights, and conflict of obligations.

By way of illustration, a person needs 10 acres of land to set up an industry. Finding that the land is cheap, he buys 100 acres of land, so that 90 acres now remains unused until he has found some use for it. Since he buys it lawfully, he has a legal right over the land. The question is whether he has a legitimate right to oust the right of the people living on the remaining 90 acres. Their right to life, right to livelihood, right to food, right to shelter are connected to that land and if they are thrown out they will have no legal right elsewhere either. From this perspective, the legitimate right over that land is of the people whose lives are dependent on that land.

The difference between legality and legitimacy is also illustrated through the *O/ga Tellis* case. When the case was brought before the court, it asked how the petitioners could claim that people had a right to live on the pavement. The PUCL, which was a party in the case, responded that that the issue is not about whether there is a right to live on the pavement, but rather the issue is that the people who live on these pavements have a

legitimate right not to be pushed below the poverty line. They argued that the pavements were close to their sources of livelihood, and if they were shifted out and forced to live 25 kms away, the additional costs would mean that the family would not be able to take in the minimum calorie intake, and would thus be pushed below the poverty line. The pavement dwellers have a legitimate right to ensure that they are not pushed to the brink of starvation, and thus even though they don't have a legal right, they have a legitimate right.

A large part of the law relating to 'public interest' has been developed by courts through PIL cases. What constitutes 'public interest' has changed over the years. The Emergency tainted the image of the courts, and there was a need to reinvent and revitalize itself. In the early 1980s, PIL was institutionalized to enhance access to justice, and a new role emerged for the courts, which were till then relevant only for those who could afford them. This opened the courts to people who would otherwise not have been able to access their rights. By the early 1990s, the courts began to assert power through PIL over issues and areas that they had not so far been concerned with, such as governance. However governance is a construct of pragmatism, not of justice. The form of governance that the courts undertook has been, by its very nature, 'top-down'. The result is that courts are increasingly being used by the executive to push and enforce unpopular decisions. For instance, the government of Maharashtra found the litigation around the Sanjay Gandhi National Park very useful. The court passed orders for eviction of the 'illegal' settlements in the park area, permitting the use of the armed forces if necessary. Today it has become easy for the executive to balance these concerns through the courts and ease out the right to life, livelihood and continuity of a whole class of people, by hiding behind the courts.

This brings us to the notion of common property and its difference from the notion of common property resources. Many of the resources that we are talking about are not on common property at all, but are attached to land which is private or State owned. This is a conceptual challenge before us today, because there is a blurring of lines between public, private and common. What then is the notion of 'encroachment'? To understand this, we need to know what is the foundation of ownership in a particular area, how these rights devolved, who gave these rights, what control has been traditionally allowed to communities over that land, etc. Traditionally, distribution of land was based on its use, and the divisions were grounded in the traditional livelihood practices of the area. Thus in areas where animal husbandry was an important livelihood source, grazing land was specifically designated and was common property land. Even those who didn't own land but owned cattle could graze their cattle on it. These practices were also carried out under the overall conceptual framework of eminent domain.

Working Group Session on LAND:

The participants were divided into three groups for discussions on specific according to guidelines. The presentation of each of the groups is as follows:

® Group 1; Industrialisation and acquisition of land: State as owner, use of PESA:

There is a definite link between globalization and the industrialization model being pushed today. When responding to the ground level situations, it is important to keep in mind the larger picture within which the process is taking place, to better identify resistance strategies.

What we are seeing today is a new phase of capitalism- the re-colonization of human and natural resources for extraction of profit, and all systems are being bent to achieve this purpose. Land, which is the prime resource in our country, is being appropriated as part of this process. The Land Acquisition Act, 1860 is being used to serve globalisation. Since all this is being done through the law, it is 'legal'.

Strategies:

- Experience with using PESA has been mixed. Often, the powers of Panchayats were not implemented and that PESA was not effective. The control of the Gram Sabha over natural resources and especially over land was almost negligible because the Central Act has been perverted by the state amendments and rendered ineffective.
- Successful struggles have been those that combined mobilisation with legal strategies. Pravin of **mm&P** (mines, minerals and People) discussed the Samatha case, where the organisation had combined the strategy of law and mobilisation to obtain a landmark judgment from the Supreme Court which protects people's rights. It was felt that mobilization of people in this struggle was as essential as taking recourse to legal strategy. Neither could proceed without the other.
- Where emphasis was laid only on law and legal strategy, with little or no mobilization of people, the struggles usually were not successful. Again, where the emphasis was purely on mobilization of people and the law was ignored, the success has been low. One example of this was given from Orissa where a local organisation was able to mobilise people against acquisition of land for a steel plant. However, their efforts came to nothing because they did not know how to file objections before the Collector and were unable to file them in time and in a proper format.
- Mobilization of women in these struggles is vital. Some of the participants shared that the struggles and movements where women have actively participated have been more effective and sustainable. Where women are in leadership positions, the struggles have been even more successful.

© Group 2: Encroachments and regularisation- legality and illegality:

Two case studies were presented by this group:

a) **Bhanwar Singh of Astha Sansthan:** 300 acres of land belonging to a tribal village in Rajasthan, was acquired by a company for construction of a factory, and the compensation package was fixed at Rs. 55 lakhs. A combination of several strategies used to challenge this project were:

- ◇ A detailed survey of the demarcated land was conducted to calculate its holistic value for the community, including its environmental, social and economic value. A figure of Rs. 9 crores was arrived at and was placed before the Land Acquisition Officer in the Section 9 claims/objections.
- ◇ A writ petition in the High Court challenging the acquisition [using the Samatha judgment], on the ground that transfer from tribal to non-tribal entities was illegal.
- ◇ They also argued that there was a Wildlife Sanctuary in the area, and the factory came within the radius of 25 kms from the boundary and therefore violated the Wildlife Protection Act.
- ◇ A video cassette of the land was prepared and placed before the court to demonstrate that the factory was destroying prime land and valuable flora and fauna.
- ◇ Suggesting an alternative site where the factory could be constructed with less harm.
- ◇ Mobilisation and awareness of the local people, through meetings, campaigns, as well as exposure visits to other factory sites to demonstrate the potential damage.

At present there is a stay on the acquisition by the High Court, and the company has tried many different tactics to deal with the situation. They tried, unsuccessfully, to sell 60 acres of the land in the share market. The local organisation, however, recognises that

although at present the court orders are in their favour, they cannot rely upon the judiciary. In future, they may find themselves against the wall again, and therefore the mobilisation of the local movement has to be sustained.

b) **Pradeep Dash of Ankuran:** Ankuran works on land rights of tribals in the Rayagada district of Orissa. During the 1970s, the government had settled large number of Bangladeshi refugees in the area and given them land pattas. They were also given other benefits such as reservations and soft loans to enable them to settle down. Now after more than 30 years, the migrants have become well entrenched and have been encroaching on the land of tribals. Ankuran has struggled to get these lands back through the courts. Last year some of the local tribal communities took forcible possession of the lands encroached, and began cultivating them. This has led to situations of conflict, which have sometimes turned violent, and requires defense for release of arrested tribals. Another challenge is to prevent the issue of economic rights from turning into an ethnic issue.

The subsequent discussion focused on the precarious nature of rights over land of marginalised groups such as dalits, tribals, minorities. While appropriation of tribal land has stepped up in recent years, the process of land regularisation is slow and painful. Takeover of tribal land by non-tribals is forbidden by law in many states. While the statutory protection is not foolproof, it still needs to be retained because there are efforts by many state governments, such as Gujarat, to amend these provisions to allow tribal land to enter the land market. There is also the issue of landless persons given land as part of the land reform process, who were never able to secure possession from the original owners.

Participants proposed that those without legal pattas are in a precarious legal position, and have to be mobilised to retain possession. Possession is the key to the struggle around land. A strategy used by groups in Rajasthan is to stop payment of bribes to forest and revenue officials. This has been found to be an effective tool to break their authoritarian image. Some groups have begun to exploit the tension and contradiction that exists between the forest department and the revenue department, over the issue of demarcation of land and its control.

The recognition of women's rights over land has not really taken place. The issue of joint *pattas* for women has been raised in certain places, but remains largely unimplemented. The only example of joint pattas that emerged from the group was from Dangs district of Gujarat.

Madhavi of Vanangana discussed the case of homesteads constructed on land classified as 'ponds'. These lands were allotted to landless and lower caste persons by the Panchayats under the UP Zamindari Abolition and Land Reforms Act, and for the past 30 years they have lived there in the belief that their possession is lawful. Overnight, a decision of the Supreme Court disturbed the legal validity of the allotments, labeling the allottees as encroachers and issued notices for eviction. In one stroke the law tossed people from legal to illegal. The difference between legality and illegality is therefore thin.

The strategy used by Vanangana is to flood the District Administration with objections to the notices. They have also started mobilisation and awareness raising of the affected villages. This is important because the law exerts such a strong hold on people's minds that they tend to accept state actions even when exploited. Consciousness of their rights is therefore an important part of the process.

Many of the participants agreed that the law is being used today to turn legal rights into illegalities. This is the case in the Godavarman case, where the Forest Department has clearly used the Supreme Court to implement its own agenda. The Forest Department has for long felt constrained by the existing law regulating eviction of tribals from rich forest land- the Supreme Court has played into its hands.

In short, the strategies highlighted during the group discussion were as follows:

- a. mobilisation of people's sangathans;
- b. detailed surveys which would then form the basis of legal interventions;
- c. ensuring women's rights- joint pattas over land should be raised as a demand, although it has not happened much;
- d. the focus should be on dalits, bhumiheen and adivasis;
- e. those who have a legal right over the land will use different strategies, which can rely more on the law;
- f. where there is no legal right over the land, or in cases where the possession is not with the people, in that case forcible possession over the land might become a necessity. In such a situation, different strategies and backups need to be devised well in advance;
- g. in all the examples cited, it was clear that using a multi pronged approach was the best.

® **Group 3: Changes in land use patterns; opening agricultural and common land for lease markets, etc.**

The group contextualised the discussion on the fact that the right to property was removed from the fundamental rights chapter during the Emergency (vide the 42nd amendment in 1976). However, after the Emergency was revoked, this right was not restored. This has given the government the scope to acquire land for any 'public purpose', and thus land can be easily acquired by the state, by companies, MNCs and so on. It is an irony that a socialist provision, has today served the processes of globalization and privatisation so well. The poor, marginalised, tribals and women are living in a state of emergency, because, their property is continuously under assault. Agricultural land has been opened up for commercial exploitation, which is a reversal of the agricultural policy of the post independence state. In many places, the laws restricting alienation of land have been diluted, and this has also facilitated the entry of agricultural land into the market. Experiences relating to land reforms were shared by participants from other states as well.

Where the government seeks to acquire land or resources, it sees only the commercial value, ignoring the value of the resource for the people who have lived there since time immemorial. In Orissa there is a popular saying that 'where there is bauxite there is a spring'. The practice of shifting cultivation in these areas depends on springs as the main source of water, and the presence of bauxite in the areas is valued by the tribals for this reason. When the state gives leases in Kashipur to companies for the mining of bauxite, it does not measure the effect this mining will have on the delicate threads that tie the bauxite to the livelihood practices of the tribals. The adivasis are losing not just their land, but their right to livelihood and their right to life itself.

Some of the strategies that local organisations have used include:

- ◇ Involving landless and marginalised groups in income generating activities which have led to their social emancipation in a sustainable way.
- ◇ Extralegal strategies have been used by organisations such as SETU, which took over 6000 acres of wasteland in a village and distributed it to the landless. The organisation had to face onslaught from the police as well as the judiciary, but was strong in its mobilisation to withstand this.
- ◇ Legal education through regular literacy camps has helped people know about their rights and regain control over land.
- ◇ Asserting control over traditional community lands by direct action. In Chandrapur village of Gadchiroli district, the Gram Sabha stopped the supply of bamboo from their forests to the paper industries on the ground that their resources are being taken away and the government is giving the royalty to others. This ban was later extended to tendu patta as well. When this dispute was taken before the Nagpur High Court, a decision was given in

favour of the Gram Sabha. The royalty from the forest produce goes into a village fund, used for providing a source of livelihood for the village community and for developing facilities like roads and other public amenities. Today the village is proud to say that it does not take any support from the government and is self sufficient.

◇ Good leadership is always essential, agreed all the participants.

Jageshwar Prasad of Vanangana described the varied experiences of his organisation with empowering women. They have found that in a male dominated society it is extremely difficult to assert women's entitlement to land and property rights. Nor are women allowed to take a lead in decision making, seen as the domain of men. Accordingly, the organisation has used a range of strategies to empower women, including -

- a. Awareness raising through street plays, pharrs, padyatras, rights awareness campaigns, and so on;
- b. Formation of self help groups, which begin with micro credit operations and develop into the training camps for women to come into the andolan;
- c. Struggle for the inclusion of wife's name in the land records;
- d. Struggle to ensure that the Village Development Committees that are formed have at least 2 women members out of a total of 5;
- e. Imparting technical and professional skills to women to make them financially independent;
- f. Removing the fear of administrative offices that many women have, by facilitating visits, interaction, and so on.

Despite the rich variety of strategies used for asserting land rights that were shared, there was an awareness of certain inherent problems, such as the constant threat of state violence directed at small movements. Another problem was the lack of information among the communities and activists about latest developments in law and policy and their implications. Further, the overarching presence of patriarchy and casteism within communities was also a huge challenge. After the group discussions, both the resource persons made comments as follows:

Rohit Jain: While the *Samatha judgment* was indeed a landmark, efforts are ongoing to dilute it. Unfortunately, the judgment is under attack not only from the legislature, which wants to bring in amendments in order to subvert its objective, but from the judiciary itself. It is significant that adverse comments on the validity of the judgment have been made by the Supreme Court itself in the BALCO case, and its application to the state of Chattisgarh has been restricted. Today, organisations are afraid to use the *Samatha judgment* in court, fearing it may be over-ruled. Increasingly the law is being changed from a protection to a stick to beat the poor. In Orissa, a new regulation has been passed requiring all landowners in rural areas to pay a "holding tax", and also to pay arrears for the past ten years, on pain of losing their land. This has suddenly thrown small and marginal landowners in the State into a panic. A similar law is being considered in Chattisgarh, where a fee structure for regularisation of pattas has been devised. A closely related trend is the opening up of agricultural land to lease markets, gearing up for the global market.

Usha Ramanathan: Each of the group presentations had certain common subtexts. The first such is the sub-text of Protests, and of how these protests are being heard by the state. Clearly the state is seeing these protests as preventing it from getting on with the task of development. In a system of representative democracy, protest is an important tool, and the presence of spaces for such protest an indicator of legitimacy. However, today the spaces for protests are shrinking, and there is a systematic crackdown on people's protest movements.

The second issue is about the uneasy relationship between NGOs and andolans, and the question of who represents whom. When issues are raised by local people's movements and then taken up by NGOs, there is a danger of objectification and alienation. What is the level of responsibility with which secondary groups represent issues, be they NGOs, political parties, or any third party? In a context where the co-option of NGOs is happening in ways we can hardly keep up with, this is an issue that needs to be confronted.

A third subtext is that of the urgent need to protect the environment. Unfortunately for us all, the current genre of 'environmentalism' has perverted the meaning of environmental protection, and put people's livelihood needs in opposition to environmental protection. E5ut each presentation seems to be saying that there is a need to protect the environment because it is closely linked to livelihoods and the sustainability of a way of life. It is time that we re-appropriate the meaning of environment protection and of development itself. The prevailing development paradigm has divided people into those that are relevant (as in those that can contribute to a material world) and those who are irrelevant. *We are fighting for the people who have become redundant in today's world.*

The session opened with a “pharr” [folk form of story telling with pictorial depictions on cloth and narrative through songs and dialogue]. This was followed by presentations by 2 resource persons and plenary discussions.

Pharr on Swajal performed by Jageshwar and Urmila of Vanangana:

The performance, based on Vanangana’s experience of the World Bank supported “Swajal” project in Chitrukoot district, had two characters- Rani & Ramu. The story began with Rani singing in excitement because the village, which has no viable drinking water source, will get drinking water. As the skit progressed, the protagonists went over many of experiences of the project, from the initial enthusiasm, to the struggle with collection of 10% contribution towards the project cost from the villagers, to the eventual exclusion of the poor. Rani questioned the collective ownership of the project, its restrictive access to water & reinforcement of financial disparity. The pharr also showed the options for supply of water- hand pump, closed well & overhead tank. They discussed how Vanangana was unable to use the women hand pump mechanics it has trained and supported over the last 8 years, because the time frame of the project did not allow the space for transfer of technical skills to women. Thus, the transfer of technical skills to the village community has been restricted to the men. They also discussed that women came in large numbers to meetings and were also elected into the local decision making body, but they did not really participate. Women’s representation in the committee would not necessarily ensure their participation in a constructive way.

Presentation by Himanshu Thakkar [South Asian Network on Dams, Rivers and People (SANDRP)]:

Taking his cue from the pharr presentation, he shared that the WB Swajal project was introduced in 1996, when WB was allowed entry into rural drinking water supply, an area until then controlled by the government. He critiqued it on two counts: one that the scheme was a back door privatization of water, disguised, as people’s participation; and second because rather than understanding the ground situation, the WB operated on techno-centric assumptions that technology as the answer.

However, the WB is very conscious of its public image, and can be embarrassed if a gap between its high sounding policies and its operations is highlighted. When dealing with an organisation like this, it becomes important to talk to officials, familiarize oneself with their policy statements, in order to formulate an effective critique. There are 2 strategies for protecting people’s rights over water:

- a. Fire-fighting, or the project based struggle: Here a project is already upon us, and the fight is to retain rights, to make the best of a bad situation. The Narmada Bachao Andolan was in this sense a fire-fighting response, since the Andolan started after the project had already been announced. The WB was the largest banker to the project, and the Andolan used the WB’s public image to embarrass it. National and international mechanisms, the media, campaigns and demonstrations were used to highlight the gap between policy and fact, finally forcing the WB to withdraw funding.
- b. Policy based struggle, or the struggle to ensure that people are part of the decision-making process itself. This is a more sustained, long term solution, and has three essential steps:
 - i) A *needs assessment* at the local level- listing the water requirements of a particular community, which could range from irrigation water to crops, drinking water, water for a fishing reservoir, to a swimming pool.

- ii) A *prioritization* of these needs in order of importance by the people themselves, determining whether the irrigation water is less or more important than the swimming pool,
- iii) Determination of the *solution* at the local level, which means that not only should modern technical alternatives be available, but also local and traditional methods such as rain water harvesting, ponds, and so on.

Ideally, our focus has to be on the policy based struggle to be able to achieve long term results, but today we are caught up in fire-fighting because of the tremendous onslaught. In fact, the situation is going from bad to worse. The Indian government has always preferred large projects, despite lessons from the past. In the past 50 years of Independence, of the entire budgetary expenditure on water projects, 70% has been spent on large dams. If large dams were such a panacea, then there should not have been any water shortage in India today. But water shortages persist, and ground water is not being replenished. The benefits of the dams are restricted to a select few, while the large majority are saddled with the costs. The government is now showing a sudden enthusiasm for river-linking, but this again will result in huge social and economic costs given that there is no scientific data to support its viability. There is a need to question these processes at the policy level itself, and for this we need to study: a) who gains; b) what is the actual cost; c) who pays the cost.

When the new Draft Water Policy was announced in 2001, the government refused to give a copy on the ground that this is a secret document. When it was finally obtained, it was found to contain a commitment to privatization. While drinking water had been announced as a priority area, there is no indication of achieving this objective since there is no commitment to recharging of ground water. The recent sale of a 22 km long stretch of the Sheonath river in Chattisgarh to a private party, without informing the people who live along it and are dependent the river water for drinking and irrigation, is part of this larger trend.

The World Commission on Dams: Although there is an awareness of the limitations of large dams, there is no real data on even one dam to juxtapose its projected achievements against its impact. In India alone, 3600 large dams have been commissioned, and throughout the world there are 45,000 such projects. In response to the growing criticism the WB commissioned a study of 50 large dams all over the world. The study was totally self-serving and unreliable. At this stage, in 1997, a process was initiated by the UN/ FAO, to set up the World Commission on Dams. The 12 member Commission consisted of representatives from all concerned parties, from bankers to movements.

The process was open and included public hearings as a mode of assessment. During the process, we did go through the dilemma of whether or not to accept WB support, or to be part of the process. However, we chose to see it through to assert our objections and place our perspective on record. The report of the WCD was released in 2002 and was a big success, in that it critiqued large dams on many counts:

- a. Environment: It was found that the environmental impact of these dams had been devastating;
- b. Development: Even seen from the limited paradigm of economic benefit, these dams did not achieve the objectives that they set out to, nor did they justify the money spent on them;
- c. The implementation and management left much to be desired;
- d. Rehabilitation: In not a single case was the rehabilitation of oustees done satisfactorily.

The WCD recommended that water projects must involve local communities in the assessment of needs, during the prioritization, as well as in the determination of the solution. Governments need to first address the issue locally, rather than pass off every such project as being in the "national" interest. Now the challenge is to get these recommendations

implemented into government policy. The Indian government was initially very antagonistic towards the Commission and did not allow it to come into the country to conduct its hearings. Towards the end, they began to participate. In the India country study, the response of the Indian government was disturbing because they discounted: (a) the importance of people's participation in decision making; (b) issue of equity; (c) accountability.

The **discussion** following Himanshu's presentation was on two issues:

- a. **River linking:** Balubhai Socha voiced his dilemma as an activist based in Saurashtra. He has seen the impact of destruction of the mangroves, the resulting salinity from the sea entering the water table and rendering local water sources undrinkable. The influx of cement companies and their extensive use of limestone has increased the salinity of ground water, rendering agriculture unfeasible in many parts of the region. The ground water level is also falling due to uncontrolled exploitation by industries through powerful bore wells. The Ground Water Policy of the government is being openly flouted, but no action is being taken. Some companies have even taken over the community grazing lands, rendering another livelihood option out of reach. As a result, many people have been forced to alter their livelihood and switch to fishing. Since this is a border area, sometimes the fisher folk stray into Pakistan, and are caught there by the Pakistani police and jailed. Thus, for the water starved people of Saurashtra, the arguments in support of river-linking seem very compelling.

Responding to this and other queries on river linking, Himanshu reiterated that any such effort must be preceded by a thorough examination of which river basins are water deficit and which are water surplus. We do not have such a study on a sub-basin, leave alone a complete river basin. On looking at the pre-feasibility & feasibility reports, it has been found that there is no valid criteria for determining surplus/deficit in a river basin. In fact the Godavari & Mahanandi river basins have been declared as surplus on the ground that a large number of projects have been constructed on these rivers! In addition, there are several intractable legal, financial and political issues to be addressed. For one thing, water is a state subject, and the history of inter state river water disputes in the country does not augur well for lasting solutions. The government is considering a constitutional amendment to address this problem. Then there are financial implications. The government's own estimate is that river linking will cost Rs. 5,60,000 crores, a huge burden on the people of this country for a scheme that is has not been demonstrated to be technically sound.

Another issue is about the integrity of the proposal. We know from the experience of the Narmada dam that in the name of providing water to Kutch and Saurashtra, a lot of support has been whipped up. The reality is that by the government's estimate, only 2% of the water will reach these two areas, and that too at the tail end. The reality of how much water reaches the tail end command areas is well documented. The logical solution is to first utilize water at its optimum at the source itself. The need of the hour is to develop water resources on a small scale at the local level, and only once this is done can a proper assessment be made as to whether a river-linking scheme is required at all. The Aravari Sansad in Alwar has demonstrated that water can be harvested locally through small dams and ponds on a large scale, completely transforming a drought prone area.

- b. **Policy Advocacy:** Given the experience of NBA, there is a need to look at the outcomes of policy advocacy from a broader perspective. The reason for the WB's decision to shift funding away from large dams could also be based on their findings that economic returns from other areas such as mining and forests, was more promising, rather than due to a "change of heart". Then again, we need to examine the relevance of issue based advocacy struggles such as that of the NBA, to examine whether these struggles

converge to address a larger politics. It was pointed out that the NBA has made a lot of effort to reach information to people living in Kutch and Saurashtra, so that they are aware of the shallowness of government's promises. The effort has been complemented through the NAPM (National Alliance of People's Movements), which enabled the NBA to link up its issue based struggle with the larger struggle of people's rights over resources.

In Hinnanshu's view there was a need to link our issue based struggles into a wider politics. Policy advocacy enabled a strategic focus on one aspect to achieve results. It helps demonstrate the reality of what is happening at the social, political & financial level. Thus the NBA's strategy has been on ensuring that the SSP does not get finances from financial institutions. When the WB withdrew its support, the government tried to get funds from other sources, or indirectly through the IDBI or ICICI. The NBA kept up its vigilance and mobilisation, by insisting that the financial institutions remain accountable to the R&R policies of the WB and the ADB, which are the source of their funds. This strategy is also being used in the struggle against the Maheshwar Dam, where the Andolan has been successful in ensuring that the dam does not get any money.

Presentation by Dunnu Roy:

Dunnu started by saying that the WB is not funding only large dams but is also supporting small dams, watershed projects, drinking water schemes and a host of other work. It is necessary to try and understand the logic behind this is. To help us do this we have to examine three primary issues:

- A. *The concept of eminent domain* allows the government, by law, to have the final say in defining 'public interest'. We need to begin by challenging this law. He illustrated this with the story of the Auranga dam, which is part of the Koel Karo Project in Bihar, supported by WB. For the last 14 years, construction on the dam is at a standstill due to a strong local struggle. In 1986 a study on the cost benefit of this dam by some groups showed why this dam should not be built. The study relied upon records of the British government in 1880 regarding a project on the same river. A canal for irrigation had been built on the river by a private company called Sohn Irrigation Co., but the water was not being used by the local people because the canal water was not considered as good for the crops as the water drawn from the traditional water sources. The report of 1880, made the same recommendations as the report of the 1986 study. Rather than considering these recommendations, the government passed a law amending the irrigation laws, which required the irrigation cess to be paid by all the farmers in the command area, irrespective of them using the canal water. After this, people began to use the canal water for irrigation, since they were paying for it anyway, and a huge profit ensued for the government. That is how the scheme was made successful. Thus we find that this privatisation of water flowed from concept of eminent domain.
- B. We need to examine *the nature of democracy* today. There is a huge gap between what is said and what is done. The conventional understanding of democracy is that there are three pillars- legislature, executive and judiciary, which act as a system of checks and balances. In fact, today the media is said to be the fourth pillar, acting as a watchdog on the other three. However in our democracy, the only kind of equality that is recognised is political equality- one person, one vote. This does not ensure that social and economic equality. As a result, when all the four pillars speak in the same voice, there is no space for the voice of the public to be heard. Today, even the space to protest is being curtailed. This concept of democracy, where the state is *parens patriae*, the owner (*bhu-swami*) as well as the administrator (*bhu-paalak*) of all resources, needs to be challenged.

C. We need to address *the tradition of knowledge* that we have adopted, where the emphasis is on the written, while the unwritten or the oral tradition is treated as invalid. This affects our approach to natural resources. The process of river linking, critiqued by Himanshu earlier today, treats rivers as bodies of water. Our tradition on the other hand is rich with myth and legend that treats rivers as living things with a life force of their own, which then gets translated into how we treat them. Take the example of the story of *Kosi* and *Bir*, both rivers in Central Bihar. Legend has it that *Bir* (a male) desired to marry *Kosi* (a female), and she was stubborn in her refusal. Finally she agreed on condition that he build a dam that would bind her during the course of one night. *Bir* worked with all his powers, and was close to achieving his goal. Realizing that she might lose the challenge, *Kosi* bribed a cock to crow before it was daybreak. On hearing the crowing, *Bir* thought he had lost the challenge and gave up, leaving the dam incomplete. Till today, all over Bihar, small incomplete *bunds* have been constructed along rivers, which gently deflect the river when it tries to break its bounds- these are called "*bir bands*". This is a system of flood control, which takes into account that the river has a life force way beyond the volume of water it carries, based on a tradition of unwritten knowledge. However when the state talks about inter-linking of rivers, it only looks at the water as a source of revenue but has no place for it viewing it as having soil, fish, velocity, etc. River-linking has in fact been done before, with devastating results. The state of California in USA saw massive river-linking where technology was used to turn entire rivers around and set them on a track opposed to their natural path. As a result, water was channelised in huge quantities into California, a desert, without considering its effect on a desert ecology.

The certain common themes run through all the World Bank water schemes:

- a. ***Cost sharing:*** The beneficiary must pay a certain percentage of the cost of the project, on the logic that until the cost is shared, there will be no ownership. The cost sharing is restricted only to the cost of the project, but the maintenance costs, are entirely borne by the beneficiary community.
- b. ***Time-saving:*** This is seen as an important variable in the entire scheme, especially in terms of the time spent by women in fetching water.
- c. ***Income generation:*** The primary activity of the project is supplemented by schemes for income generation, and generally a marketing unit is also created as part of the scheme. Thus a woman who earlier worked for 8 hours a day in her household chores, now might save 1 hour in terms of time spent in fetching water, but actually ends up working 1 2 hours in the day because she has been engaged in an income generation activity. Other members of the community are also drawn in, and as a result surplus labour is transformed into cash, which then enters the market. The objective of the World Bank is to extract surplus from the villages and draw it into the market for further circulation.

Group Discussions: After this, the participants were divided into three groups for group discussions and the group presentations are as follows:

® **Group 1: Mega projects- environmental impact, displacement, and alienation:**

Group 1 consisted of participants from Gujarat, Himachal & Orissa. The government is pushing large dams as the mantra of development in the face of so much evidence against it. The concept of "national interest" is used to give legitimacy to these projects, and the rationale of providing water to rain starved areas provides emotional appeal. The fact that the water will take 15 years to reach there, if at all, is glossed over. The displacement caused by these projects disproportionately targets dalits and tribals, and the cost of rehabilitation is not taken into account. The trend is to exclude more persons from the definition of Project

Affected Persons (PAPs). Often the same set of people are displaced repeatedly. Some of the **strategies** used by groups include:

- Advocacy and mobilisation: The NBA's efforts have been focused on displacement and struggles helps achieve greater strength, and has been found to be effective by many groups. The Orissa experience of consolidating the struggles of fishermen was shared. There is a need to form networks among different groups based on common ground, while at the same time not compromising each other's positions.
- Linking up with political parties which have a commitment to rights has been a strategy.
- To debate and resolve conceptual issues.
- There is a need to critique the Courts, which have become anti-people, anti-poor & anti-women, while continuing to find a way of asserting rights over natural resources in the law. There are unexplored spaces in the law, such as the concept of riparian rights, which we must use to introduce rights that recognise common property rights.

® **Group 2. Micro/ mini projects- issues of benefit sharing, decision-making:**

Group 2 had participants from Jharkhand, Rajasthan, Gujarat, Himachal & Orissa. The discussion revolved around the following issues:

a. *Decision making:* Some participants were of the view that the chances of community control are greater in small projects. Others felt that there is no guarantee that small projects are better, and the general approach of the state is to override people's views. There are many experiences where small dams have been as detrimental as large projects: alienation from resources, lack of rehabilitation, concentration of benefits in a few hands, and privatisation of community resources. Even when the 'community' is involved in the decision-making, it will be the powerful that are in control. The costs are borne by the poor, whether the project is small or large. When a tribal loses even a small piece of land, his family is devastated.

b. *Micro planning:* FARR shared a strategy that they have used effectively to ensure local control over resources. Training local panchayat members in micro-planning, decision-making and leadership has enabled them to undertake planning at the level of the *palli sabha* (village council), and these plans are aggregated at the level of the Panchayat and then the Block. These plans have become focal points for mobilization in situations where the state refuses to implement them or makes material alterations.

c. *Contrasting state planning with community planning:* From Jharkhand came the experience of an ill-conceived government project for the construction of 60 small ponds in one panchayat area. The entire village was mobilised by the government to build ponds for over a year, when quite suddenly the project period was over, the funding stopped and the work was ceased. As a result not a single pond was completed, and they lie in the same state till today. In sharp contrast is the experience of the Aravari river in Rajasthan. This was a seasonal river, and ran through a drought prone area. Through a people's movement, large number of *johads* or ponds were made along the catchment area of the river, which harvested rain water and recharged not only the water table but the river itself. To the extent that the river became perennial, and even had water during drought years. However, the local administration declared that construction of check dams was illegal because it decreased the flow of water to a larger dam downstream. The fish that had regenerated in the river were auctioned to a contractor. The government only backed off after the President of India visited the area and gave the movement affirmation.

d. *Benefit Sharing:* Participants discussed their efforts to ensure that benefit sharing is equitable and democratic. Since local communities are not involved in decision making processes regarding projects, they do not have any say in the benefit sharing mechanisms

either. Even within local communities the class and gender inequalities impede real participation in decision making. Women are generally excluded from a share of the benefits because they are excluded from decision making itself. One view is that as far as irrigation water is concerned, women are not really concerned since they do not own agricultural land. Traditionally, drinking water is the responsibility of women. The question is then why are women not involved in decision-making even in relation to drinking water? The reasons for their exclusion are not merely social, but run much deeper. Within the people's movements on natural resources, there is a division on the issue of women's right to equal share. Even those who support women's rights have been chary of taking up this issue since it is so potently divisive.

e. *PESA*: Some participants were of the view that even the much touted *PESA* will be used against tribals eventually. *Sarpanches* in scheduled areas, being tribals themselves, are illiterate about the law, its loopholes and intricacies. This problem is further compounded by the fact that the *sarpanches* view themselves as representatives of the government and not as representatives of the people. People's participation is reduced to the holding of meetings without involvement in decision making processes. Other participants argued that there are many examples of groups that have used *PESA* effectively. In villages which are part of the tribal self-rule movement, no government scheme can be implemented without the permission of the village council. They have even undertaken developmental activities on so called government lands without the requisite permissions, and have withstood attempts to stop them. The issue of communities undertaking the development of a resource which belongs to the state under the law is a slippery slope. It is not unusual for communities to spend years developing a particular natural resource for community needs, and suddenly find itself ousted because the land always belonged to the government.

® **Group 3: Right to drinking water:**

Group 3 had representatives from UP, Uttaranchal, Himachal and Gujarat. They began with a presentation by Jageshwar of Vanangana, who spoke about the implementation of the Swajal project in eight villages in Chitrakoot district. The organisation had taken on this project to consolidate their earlier work with women hand pump mechanics. After four years of the project they realized that it was not designed to achieve equity, and in fact reinforced caste hierarchies. Women were increasingly excluded from the decision-making as well as from the transfer of technical skills, which went primarily to men. Equally important is the fact that the project served to hasten the privatization of water. What ought and should be a fundamental right of all citizens (clean drinking water) has been transformed into a commodity that is available to only those with purchasing power, or consumers. This is the more insidious impact of the project. Participants from other states shared similar experiences with the scheme. The project has served to corrupt village communities. Due to the emphasis on women's participation a lot of women have come into the committees, and as a result are in positions of financial responsibility. But no effort was made to equip them with skills to discharge these responsibilities, nor were they permitted to actually take decisions. As a result, wherever bungling of funds has taken place, the accountability has very conveniently fallen on the women.

With government takeover of drinking water systems, traditional drinking water sources have fallen into disuse and disrepair. The village communities used to protect *nallas* (streams) that run downhill and the *talabs* (small ponds). The hill states still continue to use a centuries old system of irrigation called the '*kuhl*' system, which consists of an intricate web of small canals and water channels that channelised water from glaciers and mountain streams into small agricultural plots. With the ad hoc and unscientific installation of hand pumps by government departments, these traditional systems of management and benefit sharing have become disturbed, and in some cases the damage is irreparable. Sadly even the

sense of ownership and responsibility that local communities felt towards the maintenance of these channels has been destroyed. While it cannot be said that these systems were non-discriminatory and equitable, the needs of marginalized groups were catered for to some extent. Government intervention has on the other hand served to exclude the tribals and marginalized groups. The group as a whole also felt that there have been many examples of local communities that have set up small water bodies such as reservoirs or rainwater harvesting systems, and thus wrested control from the state over a resource that has traditionally belonged to them. On the issue of participation of women, the group was generally agreed that even though drinking water was of direct concern to them, women's participation was limited to providing of labour. Their role in decision-making has been abysmally unsatisfactory.

Presentation by Vijay Bhai of Adivasi Mukti Sangathan:

The trend today is to monetise all matters related to forests. The value of the world's forests is estimated to be \$ 4.7 trillion, which constitutes more than one-fourth of the total world GDP. Since such huge money is involved, all processes such as climatic change, carbon sequestration, protection of biodiversity, non timber forest produce (NTFP), water sources, eco-tourism, and so on, are being measured in terms of money.

As an illustration, take the Kyoto Protocol, which purportedly aims to bringing down the world's existing pollution level to the 1990 level. In fact, the Kyoto Protocol has given birth to the phenomenon of carbon trading, that allows polluting countries to purchase points from less polluting countries. The USA, which comprises only 6% of the world's total population, consumes 60% of the existing world's resources and is responsible for 25% of the world's total pollution. The irony is that the USA does not want to reduce the level of pollution it causes, and instead wants to generate forests in third world countries to 'compensate' for its irresponsible behaviour.

The concept of 'wilderness', where animals, birds and vegetation exist in isolation from human interference, has its origins in the North, particularly in Europe. In stark contrast to this is the practice in African and Asian countries where animals, humans, forests and birds, all stay together in harmony. Co-existence is suited to our ecology. But today this Northern concept of 'wilderness' is being imposed on us, threatening our way of life because it entails removal of people from nature in order to preserve nature. There are approximately 2 crore people living in forests in India, following a way of life over generations. This imported approach to conservation, labels these people as 'encroachers' in their own lands. This has not happened overnight. Prior to British rule, while the kings and zamindars did exert a limited control over the forest areas, by and large the community managed these resources free from interference, and also enjoyed most benefits from the forest. The arrival of the British changed this. After the 1857 mutiny the British realized that the local communities were independent as they had control over land, water and forests and their own system of sharing/ managing resources and conflict resolution. It was no coincidence then that a host of laws relating to property, acquisition, and control over resources were enacted post 1860. In the 1880's the Forest Department was set up, the Indian Forest Act was enacted, and in the name of scientific forestry vast tracts of forests were cut down and replaced with commercially viable species of trees. Forests were divided into four categories- protected forests, reserved forests, private forest, and village forests- and a regime of controls put in place. In most parts of the country, no proper settlement of the rights of the people living in the forests was done, and people continued to live in the forest by giving a minimum annual cess.

After Independence the zamindari system was abolished but the government's zamindari and control over forests continued. Other changes in the relationship of people to forests have taken place. In states like Kerala and Karnataka, coffee plantations have come up rapidly, and as a result private commercial interests have also entered the picture. The oustees of large-scale displacement resulting from development, have moved into forests and have settled there. There is also the issue of 'forest villages' or *vangram*, which comprise of those who were settled by the forest department inside forest areas to work as labourers. Their situation is also precarious as they have no *pattas* and their rights remain unsettled. In fact in most parts of the country these villages are not even recognized as revenue villages, and their very existence is denied by the state. After a lot of mobilization and lobbying, the state did provide a process for regularization of *pattas* of forest dwellers residing in the forests from prior to 1980, through a series of notifications in 1990. These notifications have

been implemented largely in the breach. Now their position in law is under threat due to developments in the Godavarman case.

The state is also using schemes such as Joint Forest Management, supported by foreign funding, to take away forest land from people. In Andhra Pradesh alone, around 40,000 acres of forest land has been taken away by the state. The same assault is taking place on village common lands, which have been labeled as 'wasteland' and are being made available to private companies. The concept of conservation which excludes people is alien to us, since we have lived for centuries with the forests, in a state of interdependence. It would also be wrong to assume that it is only the tribals who are dependent and the relationship does not work both ways. It is because tribal communities are living in these forests that they have remained protected from the exploitation of the timber mafia. The day the tribals are removed from the forests, the forests too will disappear.

Presentation by Madhu Sarin:

Madhu Sarin began with the following examples to illustrate that the government unilaterally takes decisions over resources, but is quick to delegate responsibility to people.

After Independence a new town planning model was designed for the rich and the poor together in Chandigarh. Land was acquired from the villagers for constructing the town with the assurance that even the poorest would be able to live in it with dignity. Initially some plots were given, later plots were auctioned every year, but eventually the poor got left out. Today, 40% of the population lives in slums. The middle class fear of crime rise and defacement of the city, has resulted in slum resettlement drives.

In Sukhomajari, the Gujjars who lived in the village were told that if they wanted to conserve water resources they had to protect their forests. The villagers made an organisation for soil and forest conservation, and decided to stop grazing in the village forest and for water to be shared equally. The concept of equal benefit sharing extended to grass and fodder, which was given free to the poorest and the widows of the village. However, 20 years later the Forest Department broke its promises and also broke the prevailing community practices. The forest department unilaterally divided the forest, giving half of it to another village, leading to an ongoing conflict between the two villages. Even after 50 years, those displaced for the Bhakra Nangal dam have still not been rehabilitated or received proper compensation.

There is confusion about what the term 'forests' implies. Is it legal forests or actual forests or government forests or private forests. The Forest Department, in the Status of Forests Report issued every two years, claims that 69 to 75 million hectares of land is under forests, comprising 22% of the total land in India. These statistics of the Forest Department are based on satellite imagery. In this data, apart from legally declared forest areas, the community owned forests of the North East as well as other vegetation, which are not government owned forests, are included. However the FAO estimates based on the same data are different by around 10 million hectares. Why so much of difference? In Orissa 44% of the land is under shifting cultivation which the Forest Department claims is forest while FAO does not recognize this as forest land and instead classify it as forest fallow.

The *Godavarman* case provided a new definition of the term forests as '*where there are trees that is a forest*', which is vastly different from existing legal classifications. The future of forest dwellers is uncertain, with the Supreme Court treating all persons residing in forests without legal *pattas* as 'encroachers'. This litigation is being pursued by urban middle class conservationists, and many of its orders are violative of existing law. The role of the judiciary is to interpret law, not to make new policy, especially on issues on which they lack knowledge. The colonial law makers played a role in destroying the control of local communities over their resources. There were many rebellions during the British rule, and in

some cases the British heard the demands and converted them into rights, for example the Van Panchayats in Uttarakhand, the detailed system of usufruct rights, including right to timber in Himachal Pradesh, and so on. After Independence, the settlement of rights has been poor. In several states settlement of rights has never taken place, and instead the forest areas have simply been declared as government forests. The situation in Orissa is the most extraordinary, where a huge proportion of the population comprises of tribals dependant on forests for survival with absolutely no rights.

Since Independence agricultural land has increased by 24 million acres and forest land has also increased by 28 million acres. Where has this land come from? The land has come from the third key category of land, that is 'wasteland'. This so called wasteland was classified as such by the British because it was not taxed, but to the local communities it was communal land used for a multiplicity of purposes, the most important being grazing. Conversion of communal property into private property has been a contribution of colonial rule. Thus in Uttaranchal as per the '80-year settlement', land was divided into *Naap* (private land that was taxed) and *Benaap* (common land which was not taxed, and therefore declared wasteland). This process of privatization has increased since Independence and today states like Tamil Nadu are actually talking about corporatisation of wastelands. In Madhya Pradesh this land is being distributed among the landless, leading to huge conflicts because the possession has been with other marginalised communities for many years, but they are suddenly termed encroachers.

The Forest Department needs to classify lands not by new or old labels but on the basis of land usage by the communities dependant on it.

Group discussions:

® Group 1: People living in protected areas- national parks, sanctuaries and reserve forests

The presentation of the group's discussion was made by Dipti of IWD. The participants in her group were from Orissa, Uttaranchal, Gujarat, and Himachal Pradesh. The group discussed how the current conservation policy of the state, that of excluding local communities from protected areas, has resulted in denial of rights to life and livelihood for the communities. People's claim to the forest produce and NTFPs for their needs are termed as criminal offences. The scale at which this is taking place is of great concern. In Chandrapur district in M.P., 26 tribal villages have been declared as elephant sanctuaries, 36 tribal villages as wildlife sanctuaries and 50 tribal villages as reserved forests. Now the state government is trying to evict tribals.

The state has responded negatively to the assertion of people's rights. Participants from Rayagada and Gajapathi in Orissa shared that with the increasing naxalite activity in their area, the presence of CRPF has also increased, as has the harassment of the ordinary people and the NGO workers by the CRPF. These NGOs are labeled anti-government and anti-national if they protest against government policies. Some of the strategies that groups have adopted to deal with the issue include:

- a. A recent amendment in the Orissa Panchayati Raj Act gave the power to local panchayats to grant licenses for collection, storage and marketing of 56 items of NTFP. This power has been put to good use in areas where NGOs such as FARR and MWD have encouraged the women's self help groups to apply for these licenses.
- b. Building a tribal movement in the areas where they work, and linking up with other such groups in order to mobilize support as well as public opinion against the current conservation policies;
- c. Litigation as a strategy to challenge the evictions as well as claim rightful compensation. Lok Adalats have also been organized in many places;

- d. Information sharing is a strategy, to make the local people aware of relevant notifications and policy changes.

® **Group 2: People's right to collect, use and trade in Non Timber Forest Produce (NTFP)**

The presentation was by Satya Prasanna of the Jari Buti Shramik Sangathan [JBSS], Himachal:

Until 1980, forest produce such as grass, fodder and medicinal plants were referred to as 'minor forest produce', although far from being minor these are a major part of the livelihood of local communities. It was only after a struggle that the Second National Forest Policy adopted the term 'non-timber forest produce' (NTFP). In Himachal the State government has no clear policy on the NTFPs, except to the extent of extraction of revenues from export and trade. The recognition of role of NTFPs as a livelihood option for forest dwelling communities remains largely ignored, and there is no data or statistics on this. The JE5SS estimates that approximately 15,000 people survive on the sale of grass species called *baggad*'. The scale of dependence on the extraction of herbal medicinal plants from high altitude pastures and forests is even higher. It is estimated that 70% of the herbal medicinal plants which enter the commercial market in India come from Himachal, and there is a keen interest in the region from pharmaceutical and cosmetic companies. An estimated 28% of the population is dependant on the collection and trade in medicinal plants as a primary livelihood option. The state government has begun to close up forest areas for the purposes of extraction of herbal medicinal plants under the garb of protecting the forests and biodiversity. Ironically, at the same time leases are being granted to private companies, such as Dabur.

Another problem is that right holders do not have uniform rights across the State. In the old Himachal area, right holders need a seasonal permit from the Forest Department to collect herbal medicinal plants, whereas in other areas there is no such need. While the permit fee is small, the procedure is far too complicated, and most people are unable to secure permits, and are forced to collect clandestinely. This allows middlemen to control the prices since the villagers have to sell fast and accept any price they get. Insofar as the laws relating to trade and traders is concerned, it appears that the State government's interest is in collection of revenues from export permits and royalties only. Operationally, this law excludes the actual village level right holders, without economic and social clout, from the trade. The last 10 years have seen the number of traders increase, but the bargaining power of the local communities has not increased. There is a need for government recognition of the collection of herbal medicinal plants as livelihood of the local communities in Himachal and to conduct a comprehensive survey and compile data on this subject.

This need in part was the basis for formation of JBSS, which aims to mobilise the communities dependant on the collection of medicinal plants to assert their rights against violations by the state, traders, and lately, the multinational companies.

A similar experience was shared from Kalahandi district of Orissa. The sale of NTFPs, such as *mahua* flowers, tamarind, *sal* seeds, *tendu patta* and so on, is part of the adivasi livelihood. On an average a single adivasi family earns about Rs.2000 to Rs.3000 by sale of NTFPs in one season. The power of rate fixation is with the Forest Department, but these are not widely publicized, so the villagers remain unaware and as a result sell for much less to the local middlemen. Often the forest department creates trouble by saying that a particular item is not an NTFP and prevents adivasis from taking it while simultaneously permitting traders to collect it. While PESA has given the right over the NTFPs in the local forests to the village panchayat in scheduled areas, this is being bitterly opposed by the Forest Department. As a result the requisite changes in local laws, rules and regulations have not been made and therefore this right remains on paper. It is largely felt that the changes brought about by globalization have been beneficial only for companies and traders by providing liberal

opportunities for economic exploitation of forests as well as minerals, while for the adivasis it has meant more restrictions and poverty.

® **Group 3: Politics of bilateral projects (such as JFM)**

The presentation was by Tarun Joshi of the Uttarakhand Van Panchayat Sangharsh Samiti:

Two types of schemes are being pushed by the Forest Department in Uttaranchal. One is Joint Forest Management (primarily in protected forests), with the objective of fostering collaboration between the Forest Department and local communities in management of forests. The other is the Eco Development Project (primarily in forests around protected areas), with the objective of rehabilitating people's rights over protected areas by setting up alternative livelihoods. The projects however are unable to target the poor and marginalized within communities. In fact, none of the World Bank supported projects have separate policies for the weaker sections of the society, and the experience over the past years has shown an increase in the difficulties faced by women and dalits. Other effects of these schemes have been:

- Exclusion of villagers from decision making, which becomes the domain of the village level committees. The committees are dominated by the Forest Department.
- The Forest Department decides the terms and conditions of the agreement, the regulations and bylaws, as well as the work undertaken. People are compelled to agree with these conditions.
- Overall control of the World Bank in all matters.
- Use of big money by forest department to systematically demolish traditional systems and community mechanisms of management and distribution. Earlier the community would pool in grain to pay for the wages of the chowkidar; today they are fighting among themselves over the funds received as part of the project.
- Women, who earlier played a key role, are being forced to take a back seat as the systems of functioning are imposed from above and do not provide the flexibility that women require. Even where women are elected to JFM committees, their role is restricted to only signing documents.
- People residing around protected areas have been compelled to leave their land and settle elsewhere, with whole villages being deserted due to restrictions on farming and grazing. Attempts by local communities to manage eco-development themselves have been thwarted by the state.

The Uttarakhand Van Panchayat Sangharsh Samiti focuses on protecting the Van Panchayats from legal and economic onslaught. In the year 2001, the forest department notified the amended Van Panchayat Rules, which substantially reduced the autonomy of the van panchayats. A state wide campaign was launched to oppose these Rules, and an alternative set of Van Panchayat Rules were drafted by the people who are part of these van panchayats. A sense of ownership in the People's Rules has developed, and as a result the state has not been able to implement the 2001 Rules till today.

Groups in Himachal have had similar problems with Participatory Forest Management (or PFM) in the state. In a lot of areas where the communities have worked for decades to protect and replenish forests, the Forest Department has used JFM to take these forests back from them. Although the Forest Department held consultations for drafting the PFM Rules, they did not incorporate the feedback in the rules. Essentially, the Rules reinforce problems which are inherent to JFM in the state, and make no attempt to transfer control from the Forest Department to the local communities.

In Madhya Pradesh, JFM is being implemented under a Government Order, and there are no Rules as yet. A few years ago local organisations studied the villages where JFM was being implemented and found several problems. Through campaigning and mobilisation of

public opinion several JFM committees were closed down. The activists participated the World Bank's Review of the JFM project, and were able to demonstrate that the problems were inherent to the scheme, and not related to implementation. The World Bank was compelled to withdraw funding from the JFM project in MP, and now it has also withdrawn in other states such as AP and Uttarakhand. However, this has been a short reprieve, because now DFID has committed Rs. 950 crores for the JFM project in MP. Some of the strategies which have been adopted by local groups are-

- a. Mobilization of people and the local community through information sharing and awareness;
- b. Drafting a People's law and mobilizing support around it;
- c. Engaging with the World Bank and other donor agencies directly, through participation in reviews, sending delegations comprising of local people, and so on;
- d. Exerting pressure on the state government through dharnas, rallies, campaigns, etc;
- e. Mobilizing the involvement and participation of dalits and women.

Discussion:

The common dilemmas that had surfaced through the workshop discussion, were that on the one hand local communities were being denied access to large areas on the pretext that these are protected, on the hand these areas were being opened up for so called 'eco-tourism'. People's protest was being countered by the Wildlife Protection Act, and other penal laws, thereby converting the issue of livelihood into a law and order problem.

The resource persons for this session were **Dunnu Roy, Madhu Sarin & Usha Ramanathan**. Dunnu began by asking participants to list the questions in their minds. The discussion revolved around the following issues:

- ❖ *Relationship between NGOs and movements:* Some people felt that the “NGOs vs. movements” debate has broadened. NGOs as well as movements both coexist despite past tension. A strategic coming together is essential, while recognising their separate roles and strategies.
- ❖ *Democracy and eminent domain:* When all four pillars of democracy seem to fail, how do we deal with the struggle for control over resources?
- ❖ *Women’s rights:* The community, for whose control over resources we speak, is gendered and perpetrates brutal forms of violence against women. The issue of women’s rights seems to be invisible in the debates around common property resources.
- ❖ *Role of State:* In articulating rights over CPRs we are critical of the state and praise traditional systems. But traditional systems of management were not devoid of problems. We have to be careful that our struggle does not become anti-state, thus inadvertently feeding into the agenda of the transnational corporations who also want a weakened state. Rather we need to look for strategies that transform and strengthen the state, while challenging the current interpretation of eminent domain.
- ❖ *Contradictions in our movement:* There are a number of contradictions in our struggle which we need to address. The hierarchies, of caste, class, and gender within communities need to be addressed at a conceptual level. The concept of community ownership is not clear. In a hypothetical situation of the discovery of the a cure for cancer in a plant that grows in a single village, would the concept of CPR privilege community ownership of this village over the plant vis-a-vis the rest of the world.

For activists who work in the context of stark poverty in Orissa, the question is whether to fight for rights, with a focus on structural changes, or to fight for survival, with a focus on the food.

- ❖ *Advocacy:* While the use of policy advocacy by groups has increased in recent years, some dilemmas related to this strategy were discussed, such as whether to challenge institutions from within or without e.g. the World Bank.

Another issue is of representation of people - could we presume to know what people’s aspirations are, what they really want?

Then there is the issue of expanding the fora where advocacy is taking place. It is not the state or the courts alone that need to be addressed today, but even institutions which affect policy and participate in planning processes, such as JNU and TERI, and so on.

- ❖ *How to use explored and unexplored spaces in the law:* The law is like a ball- there are some who play with it, and there are others who run after it. Using legal methods for the last decade, some of the lawyers present felt they have been running after this elusive ball-chasing orders. On the one hand the law gives right to land to the tribals, but on the other hand denies them either possession or ownership over it. The question is whether our justice system has scope for reform?

The judicial activism of the 1980’s, where PIL was used as a tool for asserting rights of marginalised people, is now over. Does this mean that we are going to stop using the law entirely? Legal strategies to protect rights have been used by only a few, and many legal routes which were available have not been used by us, because we have been overly dependant on the Supreme Court as well as on Supreme Court lawyers. The

use of law is a long struggle. Some 4-5 years ago we put together a People's Draft Forest Bill that is now forgotten. Are we going to push our conceptual understanding of CPRs as embodied in this draft in a proactive way, or are we going to allow it to remain as a rejoinder in the *Godavarma* case papers?

The Law has a moral and social role to play within a society. The fact that an anti-sati law exists is a big support when we denounce Deorala, no matter how much the practice of sati is supported within the hindu community. But the judicial system is a double edged sword- if we do not learn how to use it, it can hurt us. Some of the questions that we are confronted with include:

- when to make policy interventions especially when there is lack of consensus on an issue;
- when should we, if at all, approach the Courts; how to combine legal strategies with
- mobilization strategies; lack of information;

the need to ensure that our vigilance does not become lax as the legal process stretches over long periods of time; the need to devise a legal framework within which we work in a common direction.

Response from Dunnu Roy:

Many small pictures have surfaced in the workshop, which all add up to the larger picture that strongly indicates that the prevailing system is not for the benefit of the poor. Perhaps when the system started out there was some hope that the poor would benefit, but this hope has today vanished. On the first day we discussed how the concept of PIL was initiated for the protection of rights of the poor, and now after 20 years it is definitely not safeguarding the rights of the poor. If the judiciary on the one hand gives some rights, on the other it takes them away also. There has been a lot of talk of unexplored spaces in the law, but I wonder if these unexplored spaces in law could be used for changing the larger picture? We need to put this question to society as a whole. But there is a strong probability of society rejecting this option- what then? And if the Supreme Court does not help yet again, what then? What are the alternatives? We know that there is a need to integrate our struggle with a larger platform, but if we are not accepted by the larger mandate, where do we go? Can we live in a broken house and construct a new house, or do we abandon it completely while we build the new one? This question cannot be answered at this forum, and we need to go back to our organizations and think about it.

Presentation by Usha Ramanathan: Some reflections on asserting common property rights in Law:

The primary issue is of power and control, and we know that the law and the judicial system divests people from control and power over their own lives. What we need to understand is how have the rights been prevented/dislodged.

» **The issue of representation: -**

The assertion of rights compels use of institutions, such as courts, bureaucrats, MLAs, and so on, which are distant from the local context. As a result the Court/ bureaucracy takes sweeping decisions which affect large numbers of people, based on information which is often incomplete. In such a situation the issue of representation becomes critical. Naturally when the forum is a distant one, the issues will be represented before those forums by persons other than those who are directly affected. As activists, how do we represent ourselves and those whom we seek to represent. We need to be critical of ourselves and of each other and continue to talk to each other on this subject.

The problem arises because today a large number of special interest groups have emerged, each working on specialized areas. Each feels that their issue is of primary

importance- women's rights, adivasi rights, land, forests, environment. Each arrives at a different prioritization of rights based on the issue that they are working on. These groups are not talking to each other, not understanding the linkages between the different issues, and this is reflected in conflicts between people/groups/organizations working on diverse issues.

We forget that the Court has its own priorities. We are negotiating with institutions that do not support us but are vested with power and control, where the agenda is of globalisation, privatisation and expansion of capital. For the Court, markets and capital are at a higher level than rights of the people. People are considered especially useless and redundant if they are poor. In such a situation it is important that we talk to each other, interact and network with each other, prior to approaching these institutions. We need to bear in mind that we are only representatives of the communities, how much ever we may identify with the issue. For example, a particular organisation approaches the Court asking for protection of a particular right and on the other hand another organization working at the grassroots level on another aspect of the same right, or a related right is not consulted. This is a dangerous trend as one decision of the court can be all pervasive and binding on all. We have to realize that in working on specific issues one loses sight and track of what is happening elsewhere.

► **Public interest litigation today:**

No doubt PILs are one way of making institutions more democratic and the judicial system more responsive. However there was a logic for the emergence of Public Interest Litigation at the time that it did. The legal system in this country had been ridden with problems for a long time, and after the emergency there was an even greater questioning of its relevance. The development of PIL during the early 1980s suited the purpose of the judicial system by preventing it from becoming redundant and irrelevant.

On the other hand, the mantra of the 1990s has been liberalization and globalization, and if the courts had gone against the prevailing trend it could have been disastrous for the judiciary. To retain its relevance, the judiciary gave liberalization and globalization top priority. This was reflected in the priority given to good governance and efficiency, which became a premium because it is essential in order to ensure a smooth transition from a protected economy to an open economy.

Twenty-five years ago when people were protesting against injustices and violations of rights, their focus was on the State and on state violations. Today the focus of protest has shifted to supranational entities, against the actions and policies of the WTO, World Bank, IMF, ADB and multinationals. The State is no longer the sole repository of power, and is instead playing the role of a mediator trying to do a balancing act between the public/community and the multinationals. And it is clearly leaning in favour of those who are coming in, such as multinationals, while ironically the welfare and rights of the people/community are left in the lurch.

► **Rights and obligations:**

This brings us to the need to distinguish between legal rights and legitimacy of rights. In her view, the language of rights itself has become problematic today as a tool for asserting people's rights. When we talk to the State using the language of rights it proves to be counter productive because the forces of liberalization, such as MNCs, are armed with legal rights, whereas the people find themselves outside the protection of legal rights. This is why we are caught in situations of stalemate where people are unable to prove their ownership over land from which they are being displaced, or are unable to protect their jobs in industries that are polluting the environment. In the construction of rights as it stands today, we find that a clean beautiful city is more important than the right to life. The fact is that we have not

found a language or concept through which to assert the hierarchy or legitimacy of certain rights over others.

The question asked of the person who claims is- 'do you have a right?' Nobody talks of whether there is a state obligation anymore. This needs to be reversed by us when we articulate our struggles. When asserting the legitimate claims of the citizenry on the state, there is a need to focus on STATE OBLIGATIONS. She strongly endorsed that we should explore this strategy instead of always taking recourse to rights language.

We need to continuously emphasise that apart from the issue of whether we have rights or not, the state has an obligation to ensure that the citizens of the country have food, adequate shelter, and livelihood, among other things. When weighing obligations, the state cannot be seen to argue that its obligations to third parties is higher than its obligations to the people. Using this strategy we need to push the state to carry out its obligations.

What do we mean by conflict of obligations? For instance, in the urban context the state feels that there is an obligation to prevent disease and criminalisation in the city, therefore an obligation to remove slums, since these are supposedly unhealthy, unsanitary places, which breed disease and crime. But the State has another obligation, which is to provide shelter to all its citizens. The state, instead of recognising its failure in providing adequate housing to the poor, goes out to destroy housing stock which it has no capacity to replace.

Each time the state pushes out forest dwellers or demolishes slums, it is violating its obligation to provide livelihood and adequate housing to the citizens of this country. Usha asserted her belief that we can find a way to shift the prioritization by shifting the focus to state obligations.

» **Concept of eminent domain:**

This brings us to the changing interpretation of the concept of eminent domain. The state has used the concept of eminent domain to acquire ownership over land and resources, on the basis that all resources that are not privately owned, with documentary proof, are the property of the state.

Further, even this private ownership can be taken away at any time by the state for a 'public purpose'. The power to determine what is and is not public purpose lies in the hands of the state. While earlier there was at least a moral requirement to demonstrate some element of 'public purpose', today the State is perverting the meaning of eminent domain by changing user of land and asserting its right of ownership over land in the same way as a private owner. Thus in the case of rehabilitation of oustees from the Sardar Sarovar Project, the government wanted to take the grazing land of the dalit community, and this resulted in a severe back ash against the oustees.

She felt it was not necessary to challenge the concept of eminent domain, but rather there was a need to redefine it to reflect the true meaning of public purpose. The concept of eminent domain must be bound by principles of justice and fair governance. Today, the state does not see itself as accountable to these principles. We have to assert that eminent domain is not equal to ownership.

» **What is truth?**

She shared the observations made by Justice Albie Sachs of the Constitutional Court in South Africa on different kinds of truth. In his interpretation there are four kinds of truth-microscopic truth, logical truth, experiential truth, and dialogic truth.

The Courts and the judicial system are classic examples of using only the microscopic form of truth. With the tool of PIL, there was an attempt to bring the discussion to the level of dialogic truth, but today this exercise stands defeated due to takeover of PIL itself by vested interests. In a similar way, there are two ways of looking at the Constitution:

- A. Constitution for all, applicable to all- this is illusory.
- B. Constitution that promotes and protects the rights of the underprivileged.

Institutions have power within the State because they are non-majoritarian, as against majoritarian. She emphasized that majority has nothing to do with numbers. In the last 20 years we have developed a language of rights, but these rights have now developed to such an extent that they have become intimidating. Therefore there is a need for prioritisation. In this process of prioritisation, the Courts have reinvented the Constitution. Earlier the approach was to be 'all inclusive', but now because of an explosion in the number of rights, the rights themselves have been curtailed. As stated earlier, the focus of the state as well as the courts today is control and governance, both factors essential for market forces.

She felt that we need to engage with the process re-inventing the Constitution, rather than just reacting. Many *avatars* of the Constitution have come before us over the past few decades, but we have disengaged with the process, while watching the changes. There is a responsibility on grassroots groups and activists to assess and suggest how to reinvent the Constitution, for which we require a certain level of preparedness.

Presentation by Madhu Sarin:

Madhu Sarin was of the view that globalization and liberalization are mediums through which the state intends to give forests, land and water to outsiders. While we all know that during colonial rule there was a massive dislocation of people's rights, what many people tend to gloss over is that even after Independence this process has continued, and with greater momentum. In using the courts to assert people's rights, it is important to realise that the law is an instrument, and can be used both ways.

During the 1980s when there were people like Justice Bhagwati and Krishna Iyer, the scope for asserting people's rights still remained, because the courts would respond. But things have changed over the years and we see that the people occupying key positions adhere to a different ideology today. For example in the Godavarman case the Supreme Court has appointed a Central Empowered Committee (CEC) for a period of five years. The members of this committee are two Forest Officers, one IAS officer, one wildlife conservator, and one lawyer. Not one of them has an understanding or knowledge about *adivasis* and their lifestyle, nor are they sympathetic towards their plight. The case shows the use of the Supreme Court to advance the objectives of the Forest Department.

This process is being supplemented by changes in the law, such as amendments to the Wildlife Protection Act, to diminish the rights of the tribals.

She observed that the need of the hour is to spread information and raise awareness about these processes. A recent study she had conducted in Orissa and Madhya Pradesh showed that most *adivasi* pockets had no idea about PESA, but ironically were familiar with all the penal provisions of the IPC, CrPC which can be used against them.

When we talk of information sharing, we need to analyse what is the kind of networking that exists between different organisations, lawyers and activists representing interests of tribals. There is a need to move beyond macro debates and to focus on strategies employed and executed at the local level.

The panelists for this session were **Aradhana Nanda** (FARR) and **Madhavi Kuckereja** (Vanangana). **Madhu Mehra** (PLD) chaired the session.

Presentation by Aradhana Nanda

The meaning of the term “community” in common parlance includes everyone- the rich, poor, SC, ST, tribals, etc. In reality however there are categories within communities. She placed three case studies to illustrate this.

Kumbarpetta village in Kalahandi has 30 families, but the bulk of land is held by two non-tribals. As part of the land reform process, 17 tribal families were given land in 1990. “his change remained on paper because the tribals were not able to take possession as they were threatened by the original landowner. In the year 1997 these families took forcible possession of the land and began to cultivate it, even though the conditions were still hostile. They now manage to eke out a livelihood for around six to eight months from the land, which is used not only for farming but also has *tendu* and *mahua* trees on it. Women played a leading role in this struggle.

In another village, Muniguda, in Rayagada district, 6000 hectares of tribal land has been encroached by migrants from Andhra Pradesh, taking advantage of the illiteracy and innocence of the tribals. There has also been large scale transfer of land from tribals to non-tribals. Most land grabbing has been done by upper castes, businessmen, some lawyers and even tehsildars. She revealed that the whole land grabbing and land transfer racket is worth around approximately Rs. 25 crores.

In a village near Bansara river, land was held in a joint patta for the whole village which comprised of three generations of people. The land was near the bed of a perennial river. The villagers entered into an agreement to sell a few bighas, but the sale deeds and revenue records were manipulated to show that the entire land has been sold. The tribals organized themselves and protested, and were supported by some local tribal MLAs. The Government enquiry into the matter found the allegation of illegal transfer to be true. The process of returning the land to the tribals is ongoing.

These examples illustrate that the weaker groups within the community, such as tribals, women, and dalits, are exploited by vested interests and dominant groups within the same community. Social interventions must recognize this or else they will reinforce the inequalities rather than resolving them.

Presentation by Madhavi Kuckereja

Madhavi asked why the struggles around natural resources seem to give precedence to the issues of caste and class over women’s inequality within the family/When movements confront instances of domestic violence, do we say ‘if we take this up now our *sangathan* will break’? This cannot be. When we launch a struggle against inequality in the community, it must be in tandem with gender inequality within the family. Otherwise there is a danger that gender issues will get relegated to the background. The structural inequality within the institution of family will not be erased on its own.

We need to ask ourselves whether we analyze an issue in a consolidated way so as to include women’s rights as well? Are there structural barriers that impede women’s participation? Within an organization, what is the percentage of women’s representation, and their role in decision-making? Do we fix meetings at a place and time convenient to women? What are women’s roles in demonstrations? What is the division of labour within the organisation? Why does it happen that only women activists wash utensils, cook and clean up even while they are participating in movements?

There are also equally important questions relating to how accessible our movements are for people who are not literate or lack exposure to technological issues, such as women, lower castes and other marginalised groups.

The reality is that while we are quick to take up issues of violence against women by the state, we rarely take up the issue of violence against women in the family itself. It is taken for granted that women will participate enthusiastically and will automatically protect natural resources. Often in rallies and struggles women not only participate in full force but also spearhead the movement or the campaign. But all this does not imply that we or the community or the society is talking about women's rights and liberties. We need to analyze the women's situation with greater depth.

Discussion

Before opening the floor for discussion, Madhu Mehra summed up that the purpose of this session was to critically examine our own work. The objective was to identify where are the conflicts/clashes within, whether we acknowledge them is the first step towards addressing them. The following issues were discussed:

a) Patriarchy and Property:

Any community, whether it is tribal or dalit, is essentially patriarchal, as is the family. The fundamental locus of women's oppression is the family. If gender inequality and abuse inside the family is not challenged, the chances of social transformation are remote.

Even among movements for people's rights over resources, there is a general misgiving that women should not be given too many rights. The Madhu Kishwar case was discussed in some detail here. A writ petition regarding women's right to tenancy in the Ho tribes was opposed by leaders of the tribal self rule movement on the ground that if women are given property rights, the community would disintegrate.

b) Women in leadership positions enrich our movements:

In order to involve women in movements, we need to make special arrangements for women to come into leadership positions. Astha Sansthan shared its experience with bringing women into leadership/ decision-making positions, which continues to be a struggle and a learning process. Yet the efforts paid rich dividends in the tendu patta struggle, where the contractors were able to compromise many of the men by giving them alcohol and money, but this strategy did not work with the women.

The experience of the Narmada Bachao Andolan as well as other struggles around rehabilitation has been that women remain committed to the demand of 'land for land'. On the other hand men are usually ready to take monetary compensation, and spend it on motorcycles and other conspicuous consumption.

c) Bringing women into our movements will mean special arrangements and effort:

Even the culture within our organisations does not permit women to take leadership positions. The few women who are allowed to be part of these movements have to participate at great personal cost, by "being a man", as one participant put it. On the other hand right wing organisations have been alive to women's special needs and have reaped many benefits as a result. Young women who have joined the BJP to advance their political careers often comment on how the party always makes special arrangements for women, and assures their safety and security. How many of us can assure our women activists the same?

There are many examples of vibrant political struggles where women played a very critical role, not only in numbers but also in determining the issues taken up. Yet, if the women activists are assaulted or face abuse within the family, the movement does not

provide the support that was required. In such situations women have withdrawn from the movement, and the loser has been the struggle.

Strategies:

The point of this discussion is to examine how we reflect commitment to equality in our programmes, what is the place we give to women's issues when we actually implement our work, or do our programmes and interventions reinforce patriarchal mindsets?

- Economic emancipation: If women do not have power, tilting the gender imbalance is not feasible. The beginning of the solution lies in changing the balance of power within the family by enhancing women's economic power. In Orissa today thousands of women have been organised through self-help groups and micro finance schemes. Since women are being able to generate some income through SHGs, subtle changes in their status within the family as well as in the community has been noticed. The SHGs have also resulted in more attention being paid to women's concerns within the community, when earlier they were sidelined, and this is directly linked to the confidence women have gained to participate in community activities and speak out about their problems.
- Political emancipation: Parallel to this has been the process of reservation in panchayats, as a result of which a large number of elected women representatives at the panchayat level are visible. Women ward members or sarpanches have improved the situation for all women in the village. It is noticed that women are being respected more, domination by men is on the decline, and people are willing to listen to women.
- Political education: Some participants were not so convinced that there is a need to build a gender element into every issue. They felt that the purpose would be better served if there is political education of women, which deals with how to negotiate with society at large on atrocities against the oppressed, as well as with the family against atrocities on women.
- Living the example: As leaders in our own struggles, how far are we willing to apply principles of equality in our own lives, how far are we willing to search for alternative family structures that are more democratic? The real challenge begins where the words end and our own lives begin.
- Joint pattas: In most struggles the issue of joint patta has been ignored, and where the men have agreed for joint patta, it has been with great difficulty. This can be translated into reality only when women became organized and raise this demand before the administration, as was done by women's groups in Orissa. Recently they got a circular issued that from thereon whenever the land was registered it was to be done in the joint name of the man as well as the woman. A shared right in the property has become a deterrent in the sense that the men think twice before deserting their wives, and cases of desertion have started to decline.
- Analysing interventions from a women's rights perspective: When we organise a community to make an intervention, we are disturbing power relations, and therefore it is important that we begin with the most deprived group in the community. A lot of the work we do revolves around raising the economic value of a particular resource, and thus the chances of those who are already marginalised becoming even more so are high. The simple strategy of asking ourselves "will this intervention reinforce hierarchies and inequalities?" can actually be very effective.

Summing up the discussion, Madhavi stated that the cross pollination of struggles of class and gender has to move both ways. The women's movement in India had for a while moved on the premise that the women's question was different and separate, but today this

premise has been shaken up. The women's movement has recognised the need to integrate issues of caste, class, and religion.

How this integration is to take place remains a continuous process, and has no uniform formula. We need to constantly reflect on our own strategies. The struggles against class, religious as well as gender oppression have to go hand in hand, otherwise the struggles will remain incomplete.

Discussion on the main concerns flagged over the last four days:

❖ Reform or Revolution:

A dominant theme running through the discussion in this session was the metaphor of the broken house that had been discussed during earlier sessions by the resource person, with many of the participants returning to it to illustrate their own points of view. Some people felt that during the course of this workshop we could at least have tried to gain some clarity about what the pillars of the new house should be, but were unable to do this. Others felt that it was not possible to plan the blue print of the new house while staying in the broken house, and felt the need to abandon it entirely. Yet others felt the need to identify the good points of this house, to gain understanding of the new structure that was to be built. Thus our Constitution as it exists today may have weaknesses, but it has many strengths too, which we must protect, such as the Directive Principles.

❖ Information as a tool:

In advocacy, our preparedness in terms of data and analysis is important. In this context, what strategy is best to challenge government data and analysis? Do we use the same data to arrive at a different analysis, or do we present our own data to highlight a picture that is oriented towards people's rights? A serious shortcoming of many of our struggles is that we do not document and catalogue our own work, and therefore in a sense, we "lose" it.

❖ Policy Advocacy

When people's organizations engage in policy advocacy, do they have the tools required? These include not only information and understanding of the issues as well as of the agencies we are negotiating with, but also a clear demarcation of what are the negotiables and the non-negotiables of our struggle.

Earlier, the people directly affected participated in negotiations with the state. Today the scenario has changed and we find that there are many agencies who negotiate "on behalf" of the affected communities, to the extent that this has become a profession in itself. This raises several questions. Who is advocating? For whom? On whose terms is the negotiation taking place? What are the systems of accountability to the affected people? Once the right to negotiate is given, what do they do with it? Are they honestly representing public interest or are they manipulating it? What are the precautions we need to take when we know that the party we are negotiating with has malafide intentions?

❖ Inter-linkages:

Clearly there are interlinkages between different issues, rights and struggles, and yet because many of us are engaged in issue based work we lose sight of these interlinkages. We have to set up mechanisms whereby we keep talking to each other, so that we remain alive to these interlinkages.

❖ The role of NGOs:

This has been a unique workshop in a sense because it had brought together activists from grassroots movements as well as NGOs, constituencies which are often hostile to each other. During this meeting an underlying concern has been to try and find a meeting ground, a commonality that can link these constituencies.

❖ Need to redefine certain constructs:

The concept of environment protection, for instance, is a construct that has been appropriated by the state, the judiciary, and parts of civil society itself, to diminish people's rights over CPRs. When devising strategies, we need to combine protection of the

environment, with the people's rights. The concept of eminent domain too needs to be re-defined.

❖ Role of the state:

Often our perception of the state as antagonistic makes us envision alternative models that have no role for the state. But is this realistic? We need to plan a role for the state in our alternative design, a state that is truly democratic and respects people's rights over CPRs. Using the law for advancing people's rights over CPRs cannot be a technical exercise, that focuses on "what changes are required in the law?" The core issues which need to be addressed are: What are CPRs? How are CPRs used, who has access to them? Who has the right over these CPRs? What are the implications of these rights locally as well as in the global context? How can CPRs be used to enhance the standard of living of the local communities? Are different segments of the community allowed to participate in deciding how these CPRs are used?

Presentation by Dunnu Roy:

At the end of the discussion, Dunnu Roy took on the unenviable task of bringing these ideas together into some sort of cohesive shape. He preferred instead to leave the participants with a task to take back with them. During the years spent in Shahdol, the activists there devised an exercise for analyzing the law from a people's rights perspective. This exercise dissected a legislation to differentiate the rights-holders from the responsibility-holders, as follows-

Subject- CPRs	Legislation	Rights	Responsibilities
Forests	Indian Forest Act, Wildlife Protection Act, JFM Rules and notifications, etc.	Forest Department	Village communities
Land	Land Acquisition Act, Revenue Laws, Succession Laws, etc.	State, private land owners	Landless
Water	Irrigation Act, Water Cess Act, River Water Disputes Act, etc.	State governments	Village communities, individual farmers
Knowledge	UGC Act, Patents Act, New Education Policy, Information Technology Act, etc.	State	citizens
Labour	Workmen's Compensation Act, Industrial Disputes Act, etc.	State, employers	workers

When this exercise is done in detail, several more socio-political categories will emerge, such as, zamindars, big farmers, small farmers, dalits, traders, World Bank, MNCs, and so on. If we deconstruct even further, other groups emerge, such as tribals and non-tribals, women and men. In all the categories, the above table shows that some groups are always 'recipients of rights', such as the state, zamindars, traders, while other groups are always in the 'responsibilities' column, such as women, dalits, tribals etc. In the case of forests, the rights of ownership and control over forests remain with the state, while it is the local communities that are responsible for protecting the forests. If the last 30 years have seen forest cover reduced, the government says it's because of the people. During the course

of this workshop we have analysed how JFM also gives responsibilities to the people while the power remains with the state.

The general trend is that the state and its agencies retain the rights/power, and the people have the burden of responsibilities. The fundamental reason for this is the concept of eminent domain, which runs as a common thread throughout the law. In fact, three broad categories of groups emerge - those who exploit, those who are exploited, and increasingly in recent years, the middlemen. To begin with, the concept of eminent domain needs to be challenged along with making the Directive Principles justiciable.

When activists conducted this exercise in Shahdol, they not only worked on identifying the groups who have rights as against those with responsibilities, they also worked towards finding a way to switch the situation, so that those who have only responsibilities are given rights, and those who have all the rights are given responsibilities. This is the reason why law is important to our struggle.

Dunnu also shared that at that time the activists left out the question of gender, which was a mistake. If we want to involve women in our movement, then our movement must incorporate gender issues.

All the participants were urged to take up one issue of relevance to them, and analyse the law on it using the tools indicated in this workshop; and further, to take that to the community they work with in the next six months. At the end of six months, if this is done, we might begin to have a blue print of a strategy for building the new house.

EVALUATION AND CLOSING

Madhu Mehra of PLD requested the participants to provide a quick evaluation of the workshop based on the following questions:

- Two positive aspects of the workshop;
- Two aspects which need improvement;
- Opinion on the resource package;
- Opinion about the resource persons;
- Opinion on the general administration.

Responses were received from 18 participants, and the following table provides a summary.

	Content of the workshop	Workshop design	Resource package	Resource persons	Arrangements and administration
Excellent	2	1	1	3	5
Good	14	8	3	6	8
Satisfactory	-	-	1	1	2
Needs improvement	2	7	5	3	
No comments	-	2	8	5	3

The table shows that the content of the workshop was largely well-regarded, and many participants pointed out that they appreciated the opportunity to learn from the field experiences of other participants. They also found the workshop useful in developing a perspective on CPRs and sharpening their strategies.

The general framework of the workshop was appreciated. Some useful suggestions for improvement were also given such the need for more interactive group work, narrowing the focus to a few issues as well as shortening the length of the workshop, which some people found too taxing at 4 days. However, the fact that the workshop was conducted in Hindi was praised by many, since it enabled easier participation in discussions.

Many participants liked the resource package and the inclusion of materials in Hindi. Some persons did point out areas for further improvement in the resource. Several felt that resource packages should be given to all participants rather than only one per organisation.

The participation of different resource persons with experience in areas of their presentation was appreciated. The administrative, boarding and lodging arrangements were given fulsome praise.

Thereafter, Madhu Mehra of PLD formally brought the workshop to a conclusion with a vote of thanks to the participants who had taken time out of their busy schedules to come to the workshop, and to all the resource people who had committed so much time and effort. She also thanked all the PLD staff, as well as its partner organisations, especially FARR and Vanangana for sharing much of the organizational responsibilities. With this the workshop was brought to a conclusion.

COMMON PROPERTY RESOURCES AND THE LAW
December 15th - 18th, 2002

LIST OF PARTICIPANTS AND RESOURCE PERSONS

S.No.	NAME	ORGANISATION	ADDRESS
1	PLD Partners		
1.	Aradhana Nanda	Friends Association for Rural Reconstruction (FARR)	P O-Bhawanipatna, Dist. Kalahandi, Orissa 766001 06670-230105 dsb100us(5)vahoo.com
2.	Pratap Ch. Pradhan	Friends Association for Rural Reconstruction (FARR)	As above 06670-231003
3.	D. Singh Babu	Friends Association for Rural Reconstruction (FARR)	As above 06671-232862
4.	B. Malesu	FARR	P O-Bhawanipatna, Dist. Kalahandi, Orissa 766001 06670-230105 dsb100us(3)y aahoo.com
5.	Minati Padhi	Institute for Women's Development (IWD)	Hill patna, Berhampur, Ganjam, Orissa 760005 0680-212608
6.	Deepti Mayee Praharaj	Institute for Women's Development (IWD)	As above
7,	Pradeep Kr. Dash	Ankuran	Kasturinagar, District Raygada, Orissa 765001 06856-222671,223147 ankuran@rediffmail.com
8.	Anadi Charan Kilaka	Ankuran	As above
9.	Kailash Chand Kumbhkhair	Academy for Socio-Legal Studies (ASLS)	49 Vivek Nagar, Station Road, Jaipur, Rajasthan 302006 0141-2206139
10.	Hemant Kumar Sharma	Academy for Socio-Legal Studies (ASLS)	As above
11.	Tej Kr. Sharma	Mahila Punarwas Samooh Samiti (MPSS)	S-5, Bajaj Nagar, Jaipur, Rajasthan 302015 0141-2710139, 2710431
12.	Bhanwar Singh Chandana	Astha Sansthan	39, Kharol Colony, Udaipur, Rajasthan 313001 0294-2451348, 2451705, 2450110 astha3 (a), vsnl.com

13.	Madhavi Kuckreja	Vanangana	Purana Bazar, Karvi, Banda District, UP 210205 05198-236985 vananeana(2>,rediffmai 1. com
14.	Urmila	Vanangana	Asabove
15.	Jageshwar Prasad	Vanangana	Asabove
16.	Anuradha Saibaba	Partnersfor Law in Development (PLD)	F-18, Jangpura Extension, New Delhi 110014 Tel-24316832-3 pldindia@vsnl.com
17.	Shomona Khanna	PLD	Asabove
18.	Madhu Mehra	PLD	As above
19.	Sudha Dogra	PLD	Asabove
20.	Kishore Tirkey	PLD	Asabove
21.	Ram Bishnu	PLD	Asabove
II	Other Participants		
22.	Babubhai Socha	SETU	1, Punyashlok Building, Opposite Liberty Bus Stand, University Road, Navrangpura, Ahmedabad -380015, Gujarat 079-6560751,406151 02795 286814 setumail@wilnetonline.net
23.	Paresh K. Chaudhari	Centre for Social Justice	106-C, Royal Chimay opp. Vishwakalya II, Off Judges Bunglow Road, Bodakdev, Vastrapur Ahemdabad - 380054, Gujarat ! 079-6854248 sociust@icenet.net
24.	Niranjan Panda	People for Justice & Human Rights (PJHR)	At. Sidhe Swar Sahi PO - Tulaspur Cuttack-753008 Tel- 0674- 2472091
25.	Devjit Nandi	National Forum of Forest Workers and Forest People	Raha Villa, Near Railway Pump House, Torwa, Bilaspur (Chattisgarh) - 495004 Tel-07752- 248751 devieet.kanta@rediffmail.com
26.	Satya Prasanna Bambam	Jari Buti Shramik Sangathan (Sahas)	Post Box No. 50, Palampur, Himachal Pradesh 176061 01894-234902 spbambam@rediffmail.com

27.	Akshay Jasotia	Jari Buti Shramik Sangathan (Sahas)	Post Box No. 50, Palampur, Himachal Pradesh 176061 01894-234902 spbambam@rediffmail.com
28.	Praveen	Samatha	Mines, Minerals & People Road No. 1, Banjara Hills Hyderabad-500034 040- 26687051, 23352488, 23352475 mmpindia@hd2.dot.net.in samatha@satyam.net.in
29.	Pramod	Samatha	As above
30.	Arbind Anjum	Visthapit Mukti Vahini •	A-4 / 85, A Road, Telco Colony, Jamshedpur- 831004, Jharkhand 0657-283039
31.	Bijay Bhai	Adivasi Mukti Sangathan	At & Post Sendhwa, District Badwani. M.P.-451666 07281-222184 fax- 224503,223126
32.	Tarun Joshi	Uttaranchal Van Panchayat Sangharsh Morcha	Nagari Gown, P.O. Bhowali, Dist. Nainital, Uttaranchal Ph:05942-220255, 220714
33.	Meenu Bhatt	Uttaranchal Van Panchayat Sangharsh Morcha	As above
34.	Arundhati Dhuru	National Alliance of Peoples Movements	893-A, Indira Nagar Lucknow-16 0522-347365 ashaashram@yahoo.com
35.	Bandya (Adv. Sane)	Khoj	Pratajapati, Near Mahavir Bhavan, At. PO Paratwada, Dist. Amravati (Maharashtra) Tel-07223-220425, 222569 Khoimelqhat@vsnl.net
36.	Seema Mishra	Independent lawyer	B 1/1380, VasantKunj New Delhi 110 070 011- 26894787,26526861 mur1 ali@ndf.vsnl.net.in
37.	Naveen T.K.	Independent lawyer	301, New Lawyers Chambers Supreme Court New Delhi 110 0019891051015 tnaveen@hotmail.com

38.	Neeru Vaid	Independent lawyer	103/5, East End Apartments, Mayur Vihar Phase 1 Extension, New Delhi-9222715477, 9811386863 neeruvaid@vsnl.com
39.	Shipra Jha	Sruti	Q1, First Floor, Hauz Khas Endave New Delhi-110016 Tel- 26964946, 26569023 sruti@vsnl.com
III	Resource Persons		
40.	Dunu Roy	Hazards Centre	92-H, Third Floor, Pratap Market, Munirka, ND-67 haz_cen@vsnl.net
41.	Usha Ramanathan	Law researcher	283, Tower 4, 7 th Floor, Supreme Enclave, Mayur Vihar -1, Delhi-92 Tel-22750861, 22755116 urush@vsnl.com
42.	Himanshu Thakkar	South Asian Network for Dams Rivers and People (SANDRP)	53 B, AD Block, Shalimar Bagh New Delhi Tel-27479916 cwaterp@vsnl.com
43.	Madhu Sarin	Independent researcher	48, Sector - 4, Chandigarh -16 0172-741429, 740339 msarin@satvam.net.in
44.	Rohit Jain	Sruti	Q1, First Floor, Hauz Khas Endave New Delhi-110016 Tel- 26964946, 26569023 sruti@vsnl.com