

**Indian Laws,
Policies & Action
Plans Relevant
to Community
Conserved Areas**

Indian Laws, Policies and Action Plans Relevant to Community Conserved Areas¹

Many tribal communities and other traditional forest dwelling communities living in close proximity to and dependent on their immediate ecosystem for their survival, have a rich history of living in harmony with their surroundings. There are thousands of examples, ranging from sacred groves, landscapes and waterscapes that have been protected by communities through many generations to the more recent initiatives at regenerating and protecting forests, providing protection to sea turtle nesting sites, conservation of nesting and wintering birds, and safeguarding eco-systems against 'development' threats. These efforts provide immense ecological, social, economical, cultural and often spiritual benefits to the conserving communities. These efforts also help conserve sites and corridors for wildlife, and threatened species and eco-systems.

These diverse efforts have been given the nomenclature of Community Conserved Areas (CCAs). CCAs can be defined as natural or modified eco-systems (with minimal to substantial human influence) – providing significant biodiversity, ecological services and cultural values; voluntarily conserved by indigenous people or other local communities through customary laws or other effective means.

These CCAs have their own institutions and relevant rules and codes that are site specific and depend on the nature of the environment,

the nature of the community and other local social, political and economical factors.

A more recent phenomenon is the formal environment, forest, wildlife and biodiversity protection system adopted by the country and a number of formal laws, policies and action plans have been put in place by the Government of India towards this end. All these have a bearing on existing CCAs. In many cases the formal system, if appropriately designed could provide the much needed legal backing that CCAs require to hold their own against the various external and internal threats.

Although most CCAs are much older than state sanctioned protected areas, the former have in the past not been recognised by the formal protection system. In fact till the recent past this system regarded the role of local communities in conservation to be a negative one and sought to separate communities from natural ecosystems. It is only in recent times that the positive role of communities in conservation is being recognized and the current spate of legal provisions reflect this change in understanding and attitude. What follows are tabular representations showing the strengths and weaknesses of the various formal laws, policies and action plans with regard to the effect they have on CCAs.

¹ Adapted from Pathak, N. Directory of Community Conserved Areas in India, in press, Kalpavriksh, Pune/Delhi. Editorial inputs provided by Ashish Kothari and Erica Taraporevala.

Table 1. Indian Laws Relevant to Community Conserved Areas (CCAs)

Act/Policy	Provision/s	Strengths	Weaknesses
National Acts			
Indian Forest Act, 1927 (IFA 1927)	This Act provides for the conversion of Reserved Forests into Village Forests (VF) if the local communities ask for the same and fulfill certain requirements as per the Act. The concerned communities are then vested the powers of the Forest Department for the management of VFs.	Many communities conserving forest ecosystems could apply for their CCAs to be declared VFs. This could be one of the best legal supports for the forest CCAs as this leaves the institutional arrangements, rules and regulations largely to the local communities as long as the objective of effective management and protection is fulfilled.	<p>In its true spirit, this provision has not been implemented anywhere in India in the last 80 years. In the two states (Uttarakhand and Karnataka) where some areas have been declared under this category, powers to the communities have been diluted and government retains a strong say in the constitution of the institutions as also in actual management. There seems to be reluctance in the government sector to hand over real power to local communities.</p> <p>As per the Act the government retains the power to grant or withdraw the status of VF, with no clear provision on how and under what conditions such decisions should be taken.</p> <p>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, if fully implemented, could overtake this provision of the IFA, as it provides communities the right to declare and manage "community forests" (see below).</p>

**Wild Life Protection
Amendment Act, 1972 as
amended in 2003 (WLPAA
2003)**

Two new categories of Protected Areas (PAs), namely Community Reserves and Conservation Reserves have been added. Community Reserves can be declared on privately owned or community lands (the definition of which is not clear). Conservation Reserves can be declared by the government on government owned lands in consultation with the local people.

Community Reserves can provide legal support to CCAs on private or community lands. Conservation Reserves, for the first time in Indian wildlife conservation history, provide a space for consultation with local people before declaration of a reserve, and to seek their inputs in management.

The Act mandates uniform management institutions called 'Community Reserve Management Committee' and 'Conservation Reserve Management Committee' for Community Reserves and Conservation Reserves respectively. Such uniform institutions will undermine the existing area-specific management arrangements that communities have developed across India. It appears that Community Reserves allow inclusion of only community owned lands or privately owned lands. Most documented CCAs in India exist on government lands and so may not be eligible to be declared Community Reserves, unless state governments interpret the term "community lands" to include government lands. As per the Act, Community Reserves cannot be declared in existing Protected Areas without de-notifying the Protected Areas first. Such denotification will leave concerned areas vulnerable to various external threats.

			<p>An area on individual or community land which was previously managed by an individual or by a community, once declared a Community Reserve will necessarily have a representative from the State Forest or Wildlife Department on the managing body. Given the history between communities and the above mentioned government departments, this is likely to be seen as an intrusion by the conserving community or individual and will discourage CCAs from becoming part of Community Reserves.</p> <p>Once notified as a Community Reserve, the community or individual owner of the land can no longer bring about any change in the land use pattern without the approval of the State Government. This might dissuade individuals/communities from changing the status of their area to that of Community Reserves.</p> <p>Communities conserving on government owned land may have used the legal backing provided by Conservation Reserves but once declared a Conservation</p>
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			Reserve, the community in effect loses its de facto control (which it has by virtue of protecting and managing the resources) over its resources and is reduced to a mere advisor to the Chief Wild Life Warden (CWLW). This may act as a deterrent to existing community conservation efforts on government land from joining in as Conservation Reserves.
Environmental Protection Act, 1986 (EPA 1986)	Ecosystems and landscapes can be notified Ecologically Sensitive Areas (ESA). This would enable control or restriction of certain identified commercial, industrial and development activities.	Potentially a strong tool to fight against commercial and industrial pressures.	Communities know little about this Act and how it can be used. There are a number of ESA in the country, but none covering CCAs. Its relevance for CCAs has not been tested on ground yet.
Panchayati Raj (Extension to Scheduled Areas) Act 1996 (PESA 1996)	Mandates decentralisation of governance to rural bodies, like Panchayats (village councils) and Gram Sabhas (village assemblies) in predominantly tribal ("Scheduled" under Constitution) areas. Confers the ownership and decision-making rights over non-timber forest products (NTFP) to local institutions. Mandates consultation with local communities regarding many developmental and other issues relevant for a site.	Considered a revolutionary Act with a strong potential to integrate and enhance conservation and livelihood needs, help communities to resist destructive forces.	In most states where implemented, its provisions have been diluted in the state adaptations of the Central Act. Additionally, government forests and Protected Areas have been excluded from the jurisdiction of the Act.

**Biological Diversity Act,
2002(BDA 2002)**

Mandates creation of Biodiversity Management Committees (BMC) at the village level. BMCs are supposed to help communities in management, protection and recording of local biological diversity.

Provides for the declaration of areas being conserved for agricultural or wildlife biodiversity as Biodiversity Heritage Sites (BHS).

This Act includes all elements of biological diversity, domestic and wild and provides for protection of all kinds of ecosystems.

The National Biodiversity Authority (NBA) and the State Biodiversity Boards (SBB) established under the Act are required to consult the local BMCs while taking decisions related to the use of biological resources and knowledge associated with such resources.

The provision of BMC and BHS could be used to increase local community participation in wildlife and biodiversity conservation and enhance livelihoods. BMCs could be strong local institutions for management and conservation of biodiversity and the rules made under the Act could have strengthened this aspect of the Act.

The provision of Biodiversity Heritage Sites could be used to provide legal backing to CCAs, but this will depend on how BHS are defined and interpreted in the Rules or Guidelines for their implementation.

The Biodiversity Rules 2004 fail to empower BMCs to manage, use and conserve natural ecosystems. Instead their primary function has been reduced to recording local knowledge, and to help the state and national level boards to grant permission for the use of biological resources and knowledge associated with it, in their areas.

Given the fact that there is no rule/regulation in place to protect the recorded resource and associated knowledge – and that the Act has already put in place methods for granting IPRs on the resources and associated knowledge – the specified role of the BMC (a potentially empowering space) could be used to further disempower communities.

Some states like Madhya Pradesh and Sikkim have however provided for much more functions and empowerment of BMCs, and mandated legal protection to traditional knowledge.

The rules or guidelines for BHS have not been formulated and so the category has not been implemented anywhere in the

			country yet. As of late 2007, the National Biodiversity Authority is reported to be considering a set of guidelines. ²
<p>Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act 2006³ (STOTFDA 2006)</p>	<p>Provides for the establishment of several rights of tribal and forest dependent communities, including those to forest lands and resources.</p> <p>The Act also stresses a more scientific and participatory way to strengthen conservation in Protected Areas, including through co-existence, or wilful relocation where necessary.</p> <p>Empowers communities to declare any forest that they have been conserving and protecting as Community Forests.</p>	<p>Allows for a greater role and empowerment of Gram Sabha (local governing bodies) in determining claims, managing forests it has traditionally conserved, checking processes destructive of forest-dwellers' habitats, and protecting traditional knowledge.</p> <p>Provides greater possibility of community involvement in government managed Protected Areas.</p> <p>Provides for legal backing of forested CCAs in the form of "Community Forest". This is a category under which the local communities can legally protect and manage any forest that they have been traditionally protecting and can establish suitable institutions, rules and regulations.</p>	<p>There is lack of clarity on how the CF (Community Forest) provision will be operationalised.</p> <p>The fact that 'encroachments' on forest lands up to December 2005 are eligible for regularization, gives rise to possibilities of fresh encroachments in some parts of India. There is a possibility that CCAs and wildlife could be negatively impacted by this.</p> <p>Certain development projects and activities (eg. construction of roads) for the purpose of village development have been excluded from clearances under the Forest Conservation Act. This opens up a potential for misuse at some sites to allow destructive projects in forest areas, or fragmentation in deep forest areas where such projects may be legitimately allowed under the Act.</p> <p>This Act has an unclear relationship with existing forest/wildlife laws. In particular, the institutional arrangements for co-managing forests where</p>

² Kalpavriksh has provided a set of suggested guidelines to the Authority; these are available on request from Kalpavriksh.

³ This Act will not be operationalised till the Central Government has notified rules under the Act.

			<p>communities claim the right to "community forest", but the Forest Department still has control over it, are unclear.</p> <p>The arrangements for enforcement of community responsibilities to conservation are not clear.</p>
<p>Wild Life Protection Amendment Act 2006 (WLPA 2006)</p>	<p>This sets up a National Tiger Conservation Authority (NTCA), and provides a process for notifying tiger reserves.</p>	<p>Some provisions (such as the creation of Foundations with multiple stakeholder participation for each tiger reserve) could help initiate people's participation in wildlife management. Co-existence strategies in areas other than those to be made inviolate, would also need to be explored, and relocation would only be under consent. The amendment is too recent to see any impacts on ground.</p>	<p>Tiger Reserves under this amendment are exempted from some provisions of the WLPA, which has given rise to the concern that conservation status of these reserves may be compromised. The matter is in the Supreme Court as of Dec 2007.</p>
<p>State Acts</p>			
<p>The Village Council Act of Nagaland</p>	<p>This Act mandates Village Councils (the local governance body) to manage wildlife within their jurisdiction. Unlike in rest of India, most land in Nagaland is under community or private ownership.</p>	<p>Under this act, dozens of CCAs are being established and protected in Nagaland. It provides them with a strong legal tool for fighting against commercial and industrial pressures.</p>	

Table 2. Indian Policies and Action Plans Relevant to Community Conserved Areas(CCA)s⁴

Policies and Action Plans	Provisions	Strengths	Weaknesses
<p>National Forest Policy, 1988 (NFA 1988)</p>	<p>This policy deals with conservation and management of forests, afforestation and with the rules governing people's access to government owned forests and their products.</p>	<p>This policy for the first time after Indian Independence places greater importance on using local forest resources to meet local people's needs rather than industrial needs.</p> <p>The policy stresses the involvement of local people in the management of forests. In particular tribal communities' access to the forests and resources on which their livelihoods depend have been recognised.</p> <p>It was under this policy that the Government Resolution on Joint Forest Management (JFM) was passed in India in 1990. Since then millions of ha of forests outside PAs have been brought under JFM. JFM aims at regenerating degraded forests with the participation of local communities and sharing benefits accruing from timber harvests from these areas with local communities. JFM has been a miserable failure in some states and sites while quite successful in others, depending on the state policies and methods of implementation, and often also on individual forest officers and concerned local communities.</p>	<p>The policy has not been translated adequately into law as yet (the IFA 1927 remains in place even today). It is for this reason that many of its progressive provisions have remained unimplemented.</p>

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National Wildlife Action Plan, 2002-2016 (NWAP)	This plan deals with policy imperatives and strategic actions to conserve wildlife in and outside PAs, to manage these PAs, to prevent illegal trade on endangered species, to ensure people's participation in the conservation of wildlife, to promote ecotourism in PAs, among others.	The plan envisages the involvement of local communities residing in and around PAs in the management of natural resources. Their participation is recognized as an effective tool for the management of PAs. According to this plan, local communities must participate in and benefit from ecotourism developments in wildlife areas. Community initiatives in conservation are also to be supported.	The NWAP does not go the full distance in establishing tenurial security and a share in decision-making of PAs for local communities. The most serious problem, however, is that even its progressive provisions have yet to make a difference, as implementation is seriously lagging. Despite having identified specific timelines for achieving its objectives no move has been made towards its implementation. The legal environment needed to implement the NWAP is also not in place as the Wildlife Protection Act does not envisage participation of people in establishment and creation of PAs (as mentioned above).
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Draft National Biodiversity Strategy and Action Plan (NBSAP) 2004	<p>This draft policy recognizes community conservation initiatives and stresses on legal, administrative and all other kinds of support for CCAs. NBSAP also stresses on developing guidelines for implementation of Joint Protected Area Management (JPAM).</p> <p>This draft of NBSAP which was developed through country wide participation from scientists, non government organizations, bureaucrats, communities and other stake holders was submitted to the MOEF in 2003</p>	<p>Contains a number of provisions for supporting CCAs and Joint Protected Area Management (JPAM).</p>	<p>Was not accepted by the government.</p>
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