8th India Land and Development Conference

Panel Discussion on

Evolving Legalscapes to Protect India's Commons

November 5, 2024 | **4:30 — 5:45 PM**

Background

India's commons, including community forests, water bodies, and grazing lands, are crucial for the livelihoods of millions of people and for the region's ecological balance. Traditionally, these commons have been managed through customary rights, local governance structures, and informal systems of stewardship. Over the past decade, India's legal landscape governing these shared resources has undergone significant shifts influenced by judicial interventions, legal and policy reforms, and community-led governance initiatives. As the country grapples with developmental pressures, climate change, and socio-economic inequalities, the protection and management of commons has become a pivotal issue, requiring a more nuanced and adaptive legal framework.

- **Strengthening Community Rights through Legal Mechanisms**: The past decade has seen an increasing recognition of the role of communities in managing commons. Laws such as the Forest Rights Act (2006), which continues to evolve through amendments and case law, have empowered forest-dwelling communities by formally recognising their rights over forest resources. Similarly, states like Rajasthan and Karnataka have introduced frameworks that empower local governance bodies, such as Grama Parisara Nirvahana Abhivruddhi Samitis, to manage and protect commons. These frameworks reflect a shift towards participatory governance, but they are often hampered by bureaucratic hurdles and conflicts with higher-level development priorities.

- **Judicial Interventions**: Judicial interventions have significantly shaped the protection of India's commons in recent years. Key rulings, like the NGT's directive for People's Biodiversity Registers, emphasise community participation in conserving biodiversity. The Supreme Court's recognition of the right to protection from climate change under Article 21 highlights the judiciary's growing focus on climate justice. While these rulings set important legal precedents, their implementation remains a challenge, particularly for marginalised communities dependent on commons. These judicial actions continue to push for stronger governance and enforcement of rights over commons, ensuring they remain protected amidst growing pressures.

- **Response to Encroachments:** The 2011 *Jagpal Singh vs. State of Punjab* judgement marked a significant moment in commons jurisprudence by directing state governments to safeguard village commons from encroachments and privatisation. Since then, courts have

intermittently stepped in to clarify the legal status of commons, often responding to community petitions and public interest litigations. The formation of Public Land Protection Cells in three Indian states reflect this growing recognition. However, the implementation of these rulings has varied across states, underscoring the need for consistent enforcement mechanisms. Yet, Panchayats are increasingly using legal tools to evict encroachers and implement regulations that safeguard grazing lands, water bodies, and forests.

- **Evolving Regulatory Frameworks for Water Commons**: The legal governance of water commons, including surface water and groundwater, has also undergone significant changes. Initiatives such as the Jal Shakti Abhiyan and the legal recognition of rivers as living entities (such as the Uttarakhand High Court's ruling on the Ganga and Yamuna rivers in 2017, which was later stayed by the Supreme Court) reflect the evolving understanding of water commons as ecological entities that require protection beyond the traditional human-centric frameworks. However, the regulatory frameworks governing water commons remain fragmented, with overlapping jurisdictions and unclear mandates between central and state authorities.

Key Outcomes

The shifts in the legal and regulatory frameworks signal both opportunities and challenges for commons governance in India. As development pressures intensify and climate change continues to disrupt traditional ecosystems, it is critical to examine the legal tools at our disposal and chart a way forward that balances competing demands. The session aims to:

- Formulate recommendations for legal reforms aimed at strengthening community rights and sustainable management of commons, emphasising the need for an integrated approach harmonising customary and formal legal systems.

- Identify best practices to enhance grassroots legal literacy and community engagement, ensuring local perspectives and voices play a central role in the governance and protection of commons.

- Provide critical insights into the influence of judicial interventions on commons access and management, highlighting key cases that illustrate effective governance or challenges.

- Articulate the connection between community tenure over commons and sustainable development goals, highlighting how effective commons management contributes to social equity and environmental stewardship.

- Encourage cross-sector collaboration among government, civil society, and academia to foster integrated policy-making and advocacy for commons protection.

Proposed Agenda

4:30 — 4:35 PM	5 mins	Introduction and context setting
4:35 — 4:50 PM	15 mins	Opening questions for all panelists
4:50 — 5:35 PM	45 mins	Panel discussion
5:35 — 5:45 PM	10 mins	Audience Q&A

Suggested Questions for Discussion

Introductory question to all: (3 mins each)

- In recent years, we have witnessed a growing recognition of the importance of protecting India's commons, with significant strides made in legal frameworks and community-led initiatives. What specific changes have you observed in your area of work in the legal landscape that contribute to this progress?

Individual Questions: (3-4 mins each)

M. Sunil Kumar:

- Your work has been transformative in securing land rights. When it comes to commons, what legal or policy adaptations do you think are essential to address their shared and collective nature? What safeguards are necessary to prevent exploitation and ensure sustainable community stewardship?

- With your extensive experience in grassroots legal literacy, particularly with paralegals and frontline justice workers, what role do you see grassroots legal education playing in strengthening commons governance? Are there specific examples where this approach could address challenges unique to commons?

Moatoshi Ao:

- Given your extensive work on legal pluralism, especially within Nagaland, how have you seen customary and formal legal frameworks adapt to coexist in governing commons? Are there recent examples that highlight this evolution, and what implications could they have for commons elsewhere in India?

- As an academic involved in legal education, how do you envision legal curricula evolving to prepare students for the complexities of customary law, commons, and environmental governance? Are there specific topics or case studies you would prioritise to foster better understanding of commons governance?

Namita Wahi:

- Your research underscores the critical link between property rights and sustainable development. Given the essential role of commons in supporting inclusive growth, how can community tenure systems be more deeply integrate into India's developmental plans? Are there property rights models from other regions that could inform this approach?

- In your analysis, you highlight how colonial policies, fragmented laws, and administrative hurdles fuel land conflicts. Could you elaborate on how these conflicts specifically manifest around commons? Do you see particular interventions that could address these challenges?

Nupur Chowdhury:

- With your expertise on the judiciary's role in environmental justice, could you share insights into how judicial decisions are shaping commons governance today? Are there key cases where judicial interventions have significantly impacted access to and protection of commons, especially in rural or marginalised areas?

- Your work on frugal innovation emphasises community-driven solutions. How can policymakers incorporate these grassroots perspectives in formal policies on commons? Are there innovative policy models or frameworks you've encountered that successfully bridge this gap?

Shawahiq Siddiqui:

- From your extensive experience with institutional governance, how do you perceive the role of public institutions in protecting commons? Are there critical structural or policy barriers that hinder effective commons governance in India?

- As someone involved in water policy development at state and federal levels, how do you see commons-based approaches intersecting with water resource management? When drafting policies such as the Uttar Pradesh Water Policy or the Integrated Water Resources Act for Meghalaya, what factors do you consider to ensure that they support collective resource management?

The Panel

Sanjoy Patnaik, a JNU alumnus, is a social development professional with two and half decades of experience in land and forest rights issues in India, with expertise in rural and social development, participatory processes, and natural resource management. Formerly the India Country Director for Landesa, Sanjoy currently supports the Foundation for Ecological Security in undertaking policy research and advocacy, strengthening partnerships and networks, and providing strategic guidance to elevate the debate on commons and influence public policy in multiple states. He is also a writer and filmmaker.

M. Sunil Kumar is a land rights and access-to-justice expert, currently serving on the Agriculture and Farmers Welfare Commission and the Dharani Committee for the Government of Telangana. Formerly Director of Land Laws and Policy at Landesa, he also served as the State Legal Coordinator for the Society for Elimination of Rural Poverty, where he helped design andnd implement a paralegal program resolving land issues for over one million people in Telangana and Andhra Pradesh. He is co-founder and advisor at Grameena Nyayapetam, president of the Legal Empowerment and Assistance for Farmers Society, and an adjunct professor and advisor at the Center for Tribal and Land Rights at NALSAR University of Law.

Dr. Moatoshi Ao is an Assistant Professor in the Faculty of Law at the University of Delhi and also serves as the Deputy Dean of Legal Affairs at the university. He graduated from Government Law College, Mumbai, and holds an LL.M from the University of Mumbai and a Ph.D. from the University of Delhi. Prior to joining academia, he practised law with Singhania & Co. LLP in Mumbai and worked at the High Court of Bombay. Dr. Ao also taught LL.B students at Rizvi Law College, Mumbai. He has authored numerous articles in renowned journals and magazines.

Dr. Namita Wahi

Dr. Namita Wahi is a Senior Fellow at the Centre for Policy Research, where she leads the Land Rights Initiative, and a Visiting Fellow at the Centre for Law and Social Transformation in Bergen. She holds an SJD (doctoral) degree from Harvard Law School, with a dissertation on "The Right to Property and Economic Development in India". Her research focuses on property rights, social and economic rights, and eminent domain law. She has written extensively on these issues in various academic journals and edited volumes, as well as newspapers and magazines. Namita has also taught courses in these areas at Harvard University and at the National University of Juridical Sciences, Kolkata.

Dr. Nupur Chowdhury

Dr. Nupur Chowdhury is an Assistant Professor of Law at Jawaharlal Nehru University (JNU), Delhi, and Co-coordinator of JNU's Transdisciplinary Research Cluster on Frugality Studies. She also serves as Adjunct Faculty (Law and Technology), NUJS, Kolkata. Previously, she was an Assistant Professor at Jindal Global Law School and Associate Fellow at the Resources and Global Security Division, The Energy and Resources Institute (TERI). Her research spans natural resources law, environment impact assessment, health regulation, and regulation of emerging technologies. Nupur is a member of the IUCN Academy of Environmental Law Research Committee.

Shawahiq Siddiqui

Shawahiq Siddiqui, a Supreme Court advocate and Founding Partner of the Indian Environmental Law Offices, has over sixteen years of experience in environmental compliance and governance across South Asia. He collaborates with key organizations, including the Urban Development Department of Maharashtra, the Ministry of Jal Shakti, and the National Mission for Clean Ganga, as well as international bodies like the World Bank, UNECE, UNDP, and DFID. His recent projects include drafting the Maharashtra Wastewater Policy (2023), the Jaintia Hills Autonomous District Council Forest Policy (2022) in Meghalaya, the State Water Policies for Uttar Pradesh (2020), and model frameworks on renewable energy, water use efficiency, wetlands, and sustainable land use for multiple states.