

UNRAVELING THE ENTANGLED WEB
Forest, Revenue and Common Land in
Madhya Pradesh and Chhattisgarh

An Analysis of the Forest Rights Act

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Anil Garg
Aditya Mishra

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SRUTI

103/4 Sona Apartments, Kaushalya Park New Delhi 110016

Phones: 011 26964946, 26569023

E-mail: core@sruti.org.in, www.sruti.org.in

Author

Anil Garg

Email- Garganil1956@gmail.com

Aditya Mishra

Email- adv.adityamishra@gmail.com

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Foreword

Land is a complicated subject. For many, it is a riveting matter of identity and association that is symbiotic to the core. For many others, it is an incessant resource for profit that has a trickle-down effect of capital accumulation and economic growth. Perceived with antithetical interests, associations and ideas, the present status of land in India is an intricate subject to unravel and unwind. It is a saga that goes way back in time, with labyrinthine anecdotes of topsy-turvy data records, the spate of actions, and parallel procedures of reforms and policy changes.

This book is a sweat of Anil Garg's years of scrupulous research recounting the history of land in India. From the land record system in the British Raj to the Forest Rights Act in recent times, this is a compendium of historical documents, data records and landmark decisions pertaining to community rights over land and forests.

It is a *longue durée* attempt to come out of the crisis of unclear land records in India. The book is also a chronicle of the role of revenue and forest departments, forests and its inhabitants through decades of years.

With his longstanding experience of research as praxis, Anil ji also strives for solutions to fix the issues with land management and community rights. In places like Madhya Pradesh and Chhattisgarh, where tribal

communities have a long history, this book tells a story that hasn't been heard enough. It talks about their culture and how they have been dealing with problems for a long time. Involving multiple ways of data research, analysis of record files, and legislative assembly questions and answers, it dwells into the muddle of documents to provide plausible responses on ownership and management of land.

From his interactions with multiple stakeholders from forest and revenue departments, legislative assembly representatives and community leaders to hours spent in registrar offices, I have witnessed Anil Garg ji's unwavering dedication to his subject. As his persistence and endurance in working on land and community rights albeit in much difficult legal Hindi, this book is also a humble attempt to bring his decades of tortuous work in clear and lucid language. Thanks to Advocate Aditya Mishra for his determined efforts to bring this book into English, making Anil Garg's insights on this intricate subject available to a wider audience.

As the intricacies of the subject are unfolded with each chapter of this book, it would hold you to the historicity of multiple and parallel procedures of record entries, orders and policies on revenue and forest land. Imparting a tenable and factual understanding of the subject, this book invites everyone to join in and work towards a fairer and more sustainable future for India's land and its people.

**Shweta Tripathi
Sruti**

A Note from the Authors

Land, in its essence, is not just a physical entity; it is a tapestry of history, culture and identity. The vast subcontinent of India, with its diverse landscapes and myriad communities, has a complex relationship with its land. This book, an attempt to 'do justice to the past', delves deep into the intricate maze of land categorisation in India, tracing its evolution and the challenges that have arisen over time.

The narrative of land in India extends beyond mere classification as wasteland, revenue land, or forest land. It encompasses the stories these lands tell, the people they have sheltered and the histories they have witnessed. The book uncovers the often-overlooked nuances of land record-keeping, the gaps in policy implementation, and the systemic issues that have led to the current state of confusion.

At the heart of this narrative is the poignant tale of India's tribal communities. Their traditional rights, deeply intertwined with the land they inhabit, have consistently been eroded over time. Despite the myriad of government schemes and policy declarations, the promises made to these communities largely remain unfulfilled. This book seeks to shed light on these discrepancies, offering a comprehensive understanding of the challenges faced by

these communities.

The journey from traditional documentation processes like *Wajib-ul-arz* and *Nistar patrak* to the modern *Adhikaar Patrak* reveals a pattern of negligence and oversight. The book critically examines the forest department's documents and their implications, highlighting the need for a more inclusive and community-centric approach.

As we navigate through the pages, we are introduced to the proposed solutions and recommendations that aim to address the pressing issues of land management in India. The emphasis on the effective implementation of the Forest Rights Act 2006 and the need for equitable growth underscores the urgency of the situation.

The states of Madhya Pradesh and Chhattisgarh, with their rich tribal histories, serve as poignant reminders of the cultural wealth and diversity of India. Yet, their stories, struggles and contributions have often been relegated to the sidelines. This book aims to bring these narratives to the forefront, urging readers to acknowledge and address the challenges that have persisted since the British era.

In essence, this book is not just an exploration of land and its classifications in India. It is a call to action, a plea for understanding, and a testament to the resilience and spirit of India's tribal communities. As you turn the pages, you will be invited to reflect, understand and hopefully act.

Anil Garg and Aditya Mishra

Email- Garganil1956@gmail.com

Email- adv.adityamishra@gmail.com

Prologue

The Hon'ble Supreme Court of India, in the case of Wildlife First & Others vs. Union of India & others [WP (C) No. 109 of 2008], issued orders on 13.02.2019 & 28.02.2019, directing the State Governments to submit affidavits regarding the eviction status of individuals whose claims (*in the form of pattas*) under the Forest Rights Act (FRA) have been rejected. The Court aims to examine how the State Governments handled the claims under FRA, the processes followed by the government officials, and whether those whose claims were rejected have been evicted from the land or not. This order is estimated to affect approximately 10 million people.

In light of this situation, there is a recognised need to understand and study the nature of the 'rights' granted under the FRA. The 'forest right' provided under the FRA to an individual takes the form of a patta/right/entitlement on a specific piece of land. According to the Act, this land must be classified as 'forest land,' which includes various categories such as un-classified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks.

This definition raises questions about the meaning of terms like un-classified forests, un-demarcated forests,

existing or deemed forests, and whether these terms are documented in official government records. Additionally, it becomes crucial to identify whether a particular piece of land falls under these descriptions and understand the distinction between forest land and revenue land. It is essential to ascertain if the land has been used for any other purpose or wrongly distributed to individuals, as the recognition of rights must be based on a proper identification process.

Addressing these questions is crucial because the FRA aims to rectify historical injustices faced by tribal people, whose rights to ancestral lands and habitat were inadequately recognised. The goal is to ensure that the rights are granted in a manner that prevents future legal battles for the individuals. Providing rights on land without accurate identification could lead to further historical injustices. The complexity of the matter led to an extensive study of the concept of 'land' in forest areas, which includes Forest Land, Revenue Land, the historical land record system in India, the identification, notification and demarcation of land in the past, and the applicable laws governing such lands.

The complexities surrounding forest, forest land, revenue land, and the rights of communities dependent on forests have extensively been debated and regulated by the Indian Parliament and the Supreme Court. However, amidst these discussions, one critical aspect remains obscure—the intricate interplay between forest land,

revenue land and common land, along with the ground-level situation marred by historical neglect and overlapping laws. This book aims to shed light on the confusion over the identification and demarcation of these lands, explore the ramifications of mismanagement in land records, and examine the impact on the lives of the people connected to these lands. Central to this exploration is the Forest Rights Act, which has been instrumental in the past ten years, and has burdened revenue and forest departments with evidence collection to recognise and vest rights in people dependent on forest land.

Clarifying the Concept of Forest Protection

The first step towards protecting forests is to understand the precise nature of a forest and the land it occupies. This book delves into the distinct categories of land, such as revenue land, forest land and common or wasteland, while also exploring various types of forests, including reserved, protected and community forests. It addresses essential elements like rights, common property and forest produce that are intricately connected to these lands and forests.

Historical Background

To comprehend the current predicament, it is essential to delve into the historical context. This book navigates the historical recording of land in revenue books, encompassing revenue land, forest land and wasteland. It traces the evolution of forest records and management

as a separate entity and discusses the framing and implementation of laws and policies at the ground level.

Timeline and Conceptual Journey

The analysis is organised into three distinct phases: before independence, between 1947 and 2006, and after 2006. Alongside this chronological exploration, it elucidates three major concepts—Revenue Land, Forest Land, and Common Land—to provide a comprehensive understanding of the subject.

Relevant Laws and Policies

To establish a comprehensive overview, this book examines several pivotal laws and policies that have shaped the landscape of land management in the region. Some of the crucial aspects include land records during the British Raj and princely states, land reform in independent India, the Forest Act of 1927, the M.P. Land Revenue Code of 1959, certain Forest Policies, the Forest Conservation Act of 1980, landmark judgments of the Supreme Court of India, and the Forest Rights Act of 2006, among others.

Focus on Madhya Pradesh and Chhattisgarh

Given the diversity of land in India, this book primarily concentrates on the land-related issues in Madhya Pradesh and Chhattisgarh, providing insights into the unique challenges and dynamics within these states.

Overview

By presenting a comprehensive analysis of the inter-tangled status of forest, revenue and common land, and the implications on the implementation of the Forest Rights Act, this book seeks to address the longstanding dichotomy between forest protection and the recognition of the rights of forest-dependent communities. Through a careful examination of historical developments, relevant laws and ground-level challenges, this work strives to unravel the complexities and pave the way for a more informed and equitable approach to land management in Madhya Pradesh and Chhattisgarh.

Chapter 1

Land Records in the British Raj: Unraveling the Value of Land

In the days of the British Raj, land was seen as a valuable asset, much like how we see our homes today. The British Government, however, was mainly interested in the land that had value, particularly the individual land used for agriculture, as it contributed significantly to their revenue. This focus on individual property was inspired by the idea of individual ownership, where people had their own piece of land to cultivate and call their own.

Consequently, the British administration introduced various systems, such as the Permanent Settlement of Lord Cornwallis, and later the Ryotwari and Mahalwari land revenue systems. These systems were specifically designed to manage the individual agricultural land, ensuring that the revenue from such land flowed into the British Raj's coffers.

On the other hand, forests and wasteland were not given much attention as they were perceived to have little or no value to the British Government. The forests were

considered a wasteland, left unmanaged and overlooked. The British Raj's main concern was with revenue generation from the productive agricultural land.

However, with the increasing demand for timber in the mid-1800s, the British administration realised the need to pay attention to the forests. This led to the establishment of the first-ever forest department in 1864, under the guidance of Inspector General Brandis. Before this, forests were generally perceived as unused and unproductive land, with little significance for the British Raj, and to some extent, even for the Indian kings.

Understanding the land in India requires a comprehensive understanding of its various components—wasteland (barren land), forestland and revenue land. It is crucial to identify and account for each type of land accurately. The classification of land is essential to grasp the distinct nature of forest land, and this, in turn, will help us comprehend the relevant terminologies related to land in India.

To achieve a well-rounded understanding, we must delve into the details of forest land and its management. This will enable us to appreciate the role of forests in India's history and society and comprehend the significance of proper land records and classifications.

As we explore the land record system of the British Raj, we will uncover the complexities of land management during that era. This journey will shed light on how the British administration valued different types

of land, and how this valuation influenced their approach to governance and revenue generation.

In this book, we will embark on a fascinating exploration of the historical land record system, and how it shaped India's landscape and its people. By understanding this aspect of our history, we will gain valuable insights into the evolution of land management and its impact on society during the British Raj.

Land Record System

The land record system we have today can be traced back to the time of the British Raj when they first settled the land records. The main aim of the British Raj was to generate revenue from the land. They considered land with little or no value, including forest land, as wasteland. To generate revenue effectively, they organised the land record system into different systems that were applied to various parts of India. These systems were called the Zamindari, Mahalwari and Ryotwari systems.

Zamindari System

During the British Raj, the Zamindari system was a way of managing land ownership and revenue collection. Zamindars were wealthy aristocrats who owned large amounts of land, and many of them were former Indian kings who now came under British rule. In this system, a Zamindar was responsible for collecting taxes from the people living within his designated area. These taxes were then handed over to the British Government. The

tax amount was usually fixed and the British Government wasn't directly involved in dealings with individual farmers. At first, this system seemed effective and straightforward, as the British Government only had to deal with the Zamindars for revenue collection. However, it posed challenges for farmers, especially during times of poor crop yields or other difficulties. Even when crops were less abundant, the fixed tax burden remained, putting immense pressure on the farmers.

Mahalwari System

Introduced in 1833 by Lord William Bentinck, the Mahalwari system aimed to manage land and taxation at the village level. In this system, a "Mahal" referred to a village or a village settlement, and each village was considered a separate unit for tax collection.

The responsibility for tax collection fell on the entire village community, and they worked together to collect the taxes and deliver them to the British Government. This joint responsibility ensured that the burden of taxation was shared among the villagers.

The Mahalwari system brought the villagers together in managing their taxes and presented a more community-centric approach to revenue collection. It allowed them to collectively deal with any difficulties that arose in paying taxes, fostering a sense of cooperation among the villagers.

Ryotwari System

In the Ryotwari system, individual cultivators, known as “Ryots,” were considered the proprietors of the land they cultivated. Under this system, the duty of paying taxes directly fell on the individual cultivator who worked the land.

This system recognised the individual cultivator as the rightful owner of the land, and they were held responsible for paying the taxes to the British Government. The tax amount was based on the amount of land being cultivated by the Ryot.

The Ryotwari system emphasised individual ownership and direct taxation, making the cultivator solely responsible for their land’s revenue obligations. It provided cultivators with a sense of ownership and autonomy over their land, but it also put the burden of taxation solely on their shoulders.

Each of these systems had its advantages and challenges, and their implementation varied across different regions of India. Understanding these historical land management systems sheds light on the complexities of revenue collection and land ownership during the British Raj.

During the mid-19th century, significant developments such as the expansion of railways and the growth of British shipment manufacturing brought changes in India’s administrative approach. These developments led to an increased focus on forests and

wastelands, necessitating better management of these resources. Moreover, with a burgeoning population and the need for increased revenue, the administration recognised the importance of addressing wasteland issues.

In response to these factors, the first forest department of British India was established in 1864, under the leadership of Inspector General Brandis. This marked a pivotal moment in recognising the value and potential of forests and wasteland for revenue generation and resource management.

While revenue land, primarily individual property, was meticulously accounted for and settled, other areas like Madhya Pradesh and Chhattisgarh, falling under the jurisdiction of 'Central Province & Berar,' and parts of princely states like Rewa, Gwalior, Indore and Bhopal, operated under the Malgujari system, which was akin to the Jamindari system.

In this region, both forests and wasteland were largely un-demarcated and left ungoverned. The indigenous population and villagers primarily utilised these areas as common land for community work or ancillary activities. The land records during the British Raj primarily focused on agricultural land, which was later classified as Revenue Land. The settlement process of that time centred on Revenue Land, while the rest was regarded as wasteland, utilised according to the prevailing demands.

To govern land revenue matters, the Central Province Land Revenue Act of 1881 was enacted. This legislation

outlined the establishment of revenue officers such as commissioners and tahsildars and devised a systematic approach for settling and surveying revenue land. In modern times, the Land Revenue Code of 1959 governs the present land revenue system.

Before we delve into the complexities surrounding land and forest issues, it is essential to familiarise ourselves with certain terminologies that will aid in our understanding of the historical context and present-day challenges related to these resources. By grasping these key terms, we will be better equipped to explore the intricacies of land management and the conservation of forests in India's history.

Present-Day Terminologies

In the context of present-day land management, it is essential to clarify certain terms to better understand the complexities of land ownership and usage. Let us delve into these terminologies:

Village: In simple terms, a village refers to a settlement inhabited by a population, and its records are maintained by the Revenue Department. Consequently, such a village is termed as a 'Revenue Village.' The residents of a village own individual pieces of land and pay taxes to the Revenue Department. Land owned by an individual that has primarily been used for agriculture and housing is categorised as individual property. This was a significant aspect of the British Raj's land

settlement process. On the other hand, there are two types of land not owned by any individual: common land, also known as community land or nistar, which has been used by all villagers for communal purposes, and wasteland, left barren and unused. All three types of land, namely individual property, common land and wasteland, collectively fall under the term 'Revenue Land,' which falls under the administration of the Revenue Department.

Forest Land: Forest land is a specific category of land that is fully controlled and managed by the Forest Department. Although the law does not precisely define 'forest land,' it typically encompasses land with a significant presence of forests or trees or lands officially declared as forested areas. Unlike Revenue land, where agricultural and habitation land is privately owned, in forest land, the entire area is owned and governed by the Forest Department.

Abadi: This term refers to individual land, specifically used for habitation or residential purposes.

Revenue Forest Village: These villages fall under the jurisdiction of forest areas but are recorded as Revenue Villages, with individual landholders possessing rights over their land within the forested region.

Forest Villages: In contrast, Forest Villages are entirely governed by the Forest Department, and the Revenue Department holds no records of land ownership in these settlements. These villages were predominantly populated by forest department workers, and individual

land titles were not provided to them. Notably, in Madhya Pradesh, even Revenue Forest Villages came to be treated as Forest Villages after 1980.

Settlement: Settlement involves measuring and classifying land for land rights, including surveying and investigating specific pieces of land. When the settlement process pertains to a Jagir, it is referred to as Jagirdari settlement, while settlement for an individual land is known as a Ryotwari settlement.

Survey: The survey entails the demarcation of village land into permanent units of a specific size, determining precise location, area, and usage for each parcel of land. Detailed measurements of divisions, sub-divisions, and excluded areas like rivers, roads, and forests are recorded on a map, known as a survey record. This map includes information about agricultural use, subdivisions, and areas reserved for purposes other than agriculture.

Enquiry: Enquiry involves determining the land's title and deciding whether it belongs to the government, local bodies, or individuals and whether it is liable for revenue payment. Parties involved must substantiate their claims to the land during this process.

Revenue Record: A revenue record is a statement of assessment that includes names of landholders, occupancy details, respective interests, land revenue, and other relevant information.

Khasra Numbers: These are specific numbers assigned to particular pieces of land. In Jamabandi

records, the khasra number typically appears in column 7. It remains consistent across all Jamabandis. If a land is divided into parts, the khasra number is indicated as 1/1, 1/2, and so on. Further divisions are represented as 1/1/1, 1/1/2, and so forth.

Raqba: Raqba refers to the area of land. Previously, measurements were mentioned in Acres, but now they are recorded in Hectares.

Khatauni: Khatauni is a record that lists all the lands occupied by an individual within a specific Jamabandi.

Nistar: Nistar refers to the ancillary activities of villagers for daily needs or community purposes. When the government prepares a document showing all lands used for such activities, it is called 'nistar patrak.'

Wazib-ul-Arz: This document illustrates the customs performed by a village and its villagers in a particular land, which is reserved solely for that purpose.

Understanding these present-day terminologies is crucial as we explore the historical settlement process of British India, which primarily accounted for and covered revenue land. Other types of land, including actual wasteland, common land and forest land, were grouped together under the single category of 'wasteland.' However, this approach lacked clear distinctions between forest land and common land, which was later addressed by the first Forest Act of 1865.

Chapter II

Forest in British India

Before delving into the historical aspects of the Forest Act in British India, it is essential to understand the backdrop that led to the formulation of such legislation. In the mid-19th century, the British administration faced an increasing demand for resources, especially timber, both within India and for supply to other parts of the British Empire. This demand was further amplified by the development of railways, which required a significant amount of wood for railway sleepers.

The Forest Charter framed by Lord Dalhousie was a crucial step in recognising the value of wasteland, including forests, as government property. However, it was the Forest Act of 1865 that brought the issue of forests to the forefront. The Act classified forests into two categories—State Forest and District Forest. The former comprised valuable timber-rich wasteland, managed exclusively by the forest department. The latter, District Forest, was a confusing category, encompassing smaller trees and shrubs, often utilised by villagers for their daily needs.

While the Act provided a settlement for the

existing rights of people over wasteland acquired by the forest department, practical implementation remained challenging, particularly for illiterate communities. Consequently, the forest department gained extensive control over the designated forest area, largely cancelling customary rights.

In response to the shortcomings of the 1865 Act, the Forest Act of 1878 was introduced, bringing further categorisation of forests into reserved, protected and village forests. Stricter rules were imposed to limit community usage in reserved and protected forests, granting wide-ranging powers to forest officers.

The Forest Act of 1927 served as a comprehensive consolidation of previous laws related to forests, the transit of forest produce and levying duties on timber and other forest products. It also prescribed penalties for violations and granted significant authority to the forest department. The declaration of a land as forest—Reserved or Protected—was done under the provisions of this Act.

The classification of forests and the process of segregating and demarcating land into distinct entities, including forest land, were driven by commercial interests, often disregarding the rights and livelihoods of people dependent on these lands. Forests were ultimately considered the sole property of the government, while the rest of the land, referred to as Revenue Land, became a focal point of discussion during India's independence in 1947.

The history of forests in British India reflects the evolving perception of land and its resources, highlighting the complexities and implications of governmental policies on the environment and the lives of the people. As we continue our exploration, it is crucial to recognise the multifaceted significance of land and forests in shaping India's past and present.

The British Raj's land record system primarily focused on individual property, inspired by the theory of individual ownership. They emphasised revenue generation from valuable lands, such as agricultural lands, rather than wasteland, which included forests. The introduction of systems like the Permanent Settlement of Lord Cornwallis, Ryotwari and Mahalwari land revenue systems aimed to manage individual lands that contributed to the British Raj's revenue.

The need for forest management arose in the mid-1800s due to the growing demand for timber, especially for the expanding railway network. This led to the establishment of the first forest department in British India in 1864 under Inspector General Brandis. Before this, forests were often considered wastelands, left unmanaged by the British Raj and the Indian kings.

To better understand the land and its different classifications, it is essential to comprehend the terminologies used in present-day land records. A 'Revenue Village' is a settlement where the population's records are maintained by the Revenue Department, and

individuals own and cultivate land for agriculture and housing. Revenue Land includes individual properties, common land used for community purposes and wasteland or barren land. On the other hand, 'Forest Land' is solely controlled by the Forest Department and is characterised by a substantial presence of trees or forests.

When land is declared as 'Forest Land,' it may lead to villages falling under the jurisdiction of the Forest Department. Some villages were designated as 'Revenue Forest Villages,' where villagers had land rights amidst the forest, while others were termed 'Forest Villages,' fully under the control of the Forest Department. Forest Villages were primarily inhabited by workers of the forest department, and individual land titles were not provided to them.

The process of settlement involves measuring and classifying land rights and investigating and surveying land parcels. Surveying demarcates village land into permanent units, determining their precise location, area and usage. Enquiry determines land ownership, whether it belongs to the government, local bodies, or individuals, and their liability to pay revenue. Revenue Record provides information about landholders, occupancies, interests, and land revenue. Survey Record includes survey numbers and statements of area and rights.

Khasra numbers are specific numbers allotted to particular pieces of land, and they remain consistent across all land records. They may be further divided, e.g.,

1/1, 1/2, 1/1/1, indicating subdivisions. Raqba refers to the area of land, previously measured in acres, but now written in hectares. Khatauni is a record of all lands occupied in a given Jamabandi. Nistar refers to ancillary activities of villagers for daily needs or community purposes, while 'nistar patrak' is a government document showing lands used for such purposes. Wazib-ul-Arz is another document showing customs performed in a particular land and its reservation for that purpose.

During British India, the forest was categorised into State Forest and District Forest, leading to confusion. The Forest Act of 1865 was followed by the 1878 Act, aiming to refine forest classification into reserved, protected and village forests. Stricter regulations were imposed to protect forests from community use in reserved and protected areas, granting forest officers significant authority.

The enactment of the Forest Act of 1927 consolidated prior forest laws and granted the forest department more extensive control and enforcement powers. Despite the Act's provisions for resolving existing rights, implementation challenges persisted, particularly among illiterate communities, leading to the forest department's control over forest lands and the cancellation of customary rights.

The classification and demarcation of land and forest were influenced by commercial interests, often neglecting the rights and livelihoods of people dependent on these

lands. This led to forests becoming the sole property of the government, while Revenue Land became a significant topic of discussion during India's independence in 1947.

The history of forests in British India demonstrates the dynamic relationship between land, resources, governance and communities. It sheds light on the complexities and implications of colonial policies, influencing India's environmental and social landscape. Understanding this historical context is vital as we explore the challenges and changes faced by India in managing its natural resources in the present day.

Chapter III

Land Reforms in Independent India

After gaining Independence, the Government of India took measures to implement land reforms through the enactment of the Jamindari Abolition Act and the Land Ceiling Act. Since “Land” was a state subject under the constitution of India, different states formulated their own laws for Jamindari Abolition. The land under Jamindari comprised cultivated agricultural land, common land, forest land and barren wasteland. After the abolition of Jamindari, agricultural land came under private holders, forests were transferred to the forest department, some common land and wasteland went to the forest department, while certain portions of common and barren land remained with the government. This last portion was now officially recognised as common land, which was later handed over to the village panchayats.

Before Independence, the laws governing princely states differed from those of the British Raj, although the princely states had adopted British laws in most of their activities. For instance, the Forest Act of 1927 by the British Raj was adopted by the Rewa State as the Rewa

Forest Act, resulting in forest management practices closely aligned with British laws. Similarly, in revenue matters, the princely states codified and managed their land in a manner similar to the British Raj.

When the princely states merged with the Indian Union, the forest and wasteland of these states became amalgamated with the Government of India. The forest and wasteland were predominantly taken over by the forest department without proper inquiry and without recording indigenous rights.

In North India, the Zamindari system was prevalent. When this system was abolished, a substantial area of uncultivated land was taken over by the government from the princely states. The government then allocated this land to panchayats and the forest departments. However, some land still remained unoccupied.

In South India, the Ryotwari system was in practice, and unoccupied land remained government property, not under the ownership of any Zamindar. Here, the land continued to be with the government, which demarcated it as forest or panchayat land. These lands were known as C&D lands in Maharashtra and Karnataka or poromboke in Tamil Nadu. In most states, all lands not under cultivation by intermediaries or tenants, including wastelands and forests, were acquired by the State following the abolition of Zamindari.

After Independence, land that had trees, shrubs, or was used as waste or common land and was recorded

for easement rights in the revenue records of Malgujari/Jamindari villages of the British Raj had a distinct identity and served community purposes.

Post-independence, this land was acquired by the Government of India under the Jamindari Abolition Act. The forest department then demarcated this land as Reserve Forest/Protected Forest in their forest records. Thus, all lands under the record of nistar patrak or wajib-ul-arz, which were used for the usufruct and public rights, were taken over by the forest department. These lands were mentioned in revenue records as chhote jhaad ka jungle, bade jhaad ka jungle, nistari jungle, jungle khurd, jhudpi jungle, jungle jangla, etc.

When the forest department gained control over this land, it was not removed from the revenue records. These lands continued to remain as “unoccupied land” or dakhil rahit bhumi (land free from all encumbrances) in Revenue Records, as per the M.P. Land Revenue Code, 1959.

The M.P. Land Revenue Code, 1959 introduced nistar patrak and wajib-ul-arz, which classified the land as common land. Simultaneously, the same land was managed by the forest department and made part of their “working plan.” Consequently, a significant portion of the land fell under the control of the forest department.

The government was well aware that a large chunk of land belonging to Nistar/Dakhil Rahit Bhumi had been handed over to the Forest Department. In 1958, the

government issued a notification making the provisions of the Forest Act, of 1927, applicable to all such forest land vested in the State. This land was denoted as “Un-demarcated Protected Forest,” neither Reserved nor Protected Forest. Although the notification clarified that the existing rights of the people on such land shall not be affected, this clarification was not implemented effectively, and the forest department took over control of the land.

To address uncertainties, in 1963, the forest department initiated demarcation, survey and mapping for lands declared as protected forests by various notifications. Protected forest compartments were drawn on Patwari maps, showing *khasra* numbers, and the survey was conducted for the area, with boundaries marked on maps. The land included in the protected forest compartment was shown in green colour, while the land outside the compartment was marked in orange. The term “Orange Area” or “Un-demarcated Forest” was not mentioned in any law, but the state government started using this term in their notifications and government orders.

Overall, land reforms in independent India, including the Jamindari abolition and land ceiling laws, wrongly targeted common land, wasteland, and forest land instead of focusing on individual land. As a result, the majority of people who depended on these lands for their livelihoods were left unaddressed.

The categorisation of land for Nistar/easement rights, as well as the categories of chote Jhad, Bade Jhad ke Jungle, and land that may or may not be declared as forest, were merged under one identity as forest in a hasty manner without distinguishing the differences in these lands.

The revenue department and the forest department did not adequately address these issues, partly due to unwillingness and partly because it required a laborious survey and demarcation process.

Movements like 'Bhoodan' initiated by the Government also failed to achieve their intended goals, leaving questions about people's rights on forest land, common land, and wasteland unanswered.

Chapter IV

Forest in Independent India

Following independence, forests were primarily governed by the Indian Forest Act of 1927. Section 3 of this Act stipulates that the state government can designate any 'forest-land' or 'waste-land', which is either government property or over which the government has proprietary rights, as a 'Reserve Forest'. The procedure to declare such a Reserve Forest is outlined in Section 4.

However, the Act does not define what constitutes 'forest-land' or 'waste-land'. Technically, land can be categorised based on its nature (e.g., *cultivable, barren, government-owned, or forested*) and its purpose (e.g., *for agriculture, grazing, or other uses*). When land undergoes a change in status, it's crucial to discern whether its nature or its purpose is being altered.

The term 'forest land' remains undefined in Indian law. Thus, when the forest department acquired land from princely states and "Jamindars", it was labelled as forest. In revenue records, this land's nature was described using terms like '*bade jhad ka jungle, chhote jhad ka jungle, jungla*' or as rocky, hilly, grassland, or barren land. The purpose of the land was then shifted from community

use to forestry or designation as a reserve forest. In some instances, even the nature of the land was altered in the records.

According to the Forest Act of 1927, for land to be declared as a Reserve Forest, it must fall under the categories of forest land, wasteland, or government land. However, the nature of the land was often confused with its intended use, resulting in lands being allocated for forestry purposes irrespective of their inherent characteristics.

This same procedure was applied to protected forests, as outlined in sections 29 and 30 of the Indian Forest Act of 1927. When the forest department designated land as either Reserve or Protected Forest, they established boundaries and restricted or halted land use for local villagers and their livestock. This land became the exclusive property of the forest department, leaving local communities at their mercy.

Sections 4 to 6 of the Forest Act of 1927 specify that when a notification under section 4 is issued to declare a piece of land as a Reserve Forest, any new rights or clearances for cultivation are prohibited under section 5. A forest settlement officer subsequently publishes this information and solicits claims regarding such land under section 6. If no claims are made or discovered during the inquiry, rights are extinguished. In practice, these inquiries were either not conducted or were carried out negligently, resulting in the rare confirmation of rights on

lands declared as Reserve Forests.

Individuals who used the land for cultivation and grazing, or relied on the forest for their livelihood were labelled as ‘encroachers’. If caught, they face legal repercussions.

It’s noteworthy that these lands, when taken over, were often listed as common lands or ‘*nistar*’ in revenue records. While ‘*Nistar Patrak*’ and ‘*Wajib-ul-arz*’ records existed in Revenue offices, officials seldom consulted these documents.

Forest policies from 1952 onwards, as well as earlier policies and notifications, did not address this legal and record-keeping confusion. The forest department thus assumed control of these lands, excluding the dependent communities.

Terminologies

When the forest department acquires a piece of land, it’s demarcated as a ‘block’, and a block history is compiled. Following this are the ‘Range’ and then the ‘Division’. The overarching plan for a forest division is termed the ‘working plan’, which outlines all activities for that particular division. This plan is typically set for a decade. Initially, working plans were designed solely for Reserve Forests, but post-1965, they also encompassed Protected Forests.

According to the Forest Department, Madhya Pradesh’s working plan comprises 30,04,624 hectares of

Protected Forest land and 1802.94 sq. km of Orange Area land. Chhattisgarh's working plan includes 36,64,755 hectares of Protected Forest land and 2,14,838 sq. km of Orange Area land.

While the forest department could have documented the existing rights of individuals in a protected or reserve forest and included it in the block history, this was often overlooked.

The Indian Forest Act of 1927 details the process of designating a forest, whether reserve or protected. Both processes require the settlement of existing rights over the land before its declaration as a forest. Later provisions were also made for de-notifying a forest area back to Revenue Land.

In some instances, a portion of a reserve forest is allocated to a village for management, termed a 'Village Forest', as described in Section 28 of the Indian Forest Act of 1927.

Multiple Proceedings

From 1947, the Indian Government began managing forests through various laws, from land ceiling to "Jamindari abolition", aiming to bring forests from former estates or princely states under government control. This was coupled with the extension of the Indian Forest Act of 1927 and the introduction of the Land Revenue Code to clearly demarcate land between the Revenue and Forest Departments. Despite these efforts, many issues

arose, leaving the rights of communities dependent on forests unresolved.

The 'Orange Areas' refer to lands covered by the forest department but not officially declared as Reserve or Protected. These areas, which are in a liminal state between forest and revenue land, are essential for the livelihoods of countless Tribal's.

An official letter from the Additional Secretary of the Department of Forest, Government of Madhya Pradesh, dated 24th January 1994, highlights the confusion surrounding land categorisation, indicating that both the revenue and forest departments claim an area of 12,394.77 sq. km.

Chapter V

Balancing Conservation and Rights

From the era of the British Raj, a significant debate has persisted between the conservation of forests for their appropriate use and the rights of the populace over these forests. Post-Indian Independence, beyond the territories designated as forests by the British, a substantial amount of land was annexed and categorised as forest by the forest department. This same department was tasked with settling the rights over these newly labelled forest areas.

As previously discussed, the settlement of rights (under sections 5 to 19 of the Indian Forest Act 1927) and the notification process (under section 20 of the Indian Forest Act 1927) are prerequisites for designating an area as a forest. For the settlement of rights, the Sub Divisional Officer (SDO) has the authority to assess these rights.

Historical records indicate that rights were seldom settled, and lands were not distinctly demarcated as forests. Some lands were declared forests through official notifications, while others were not. Some lands were recorded in either forest or revenue records, and some were documented in both, due to the absence of physical

verification by either department. This led to confusion between the Revenue and Forest departments regarding land jurisdiction.

Between 1950 and 1980, a plethora of notifications, orders, and policies were established by both the Revenue and Forest departments to manage their respective lands. Some notifications declared Revenue land as a Reserve or Protected Forest, while others reversed this process due to increasing demands for agricultural land. Consequently, the status of lands straddling the boundary between Revenue and Forest territories became increasingly complex.

The Forest Conservation Act of 1980

A pivotal development in the history of forest conservation and management was the introduction of the Forest Conservation Act in 1980. This legislation restricted the conversion of forest land for non-forest purposes without the central government's prior approval. This meant that the process of de-notification, where forest land was reverted to revenue land, was now prohibited. Moreover, land previously identified in revenue records as '*bade jhad ka jungle, chhote jhad ka jungle, jungla*' or as rocky, hilly, grassland, or barren land, which were later designated as forest lands after independence, could not be reverted back to revenue lands. The Act also did not provide a clear definition of 'forest land', leading to a presumption that all lands under the forest department's control were

forest lands, further complicating matters.

This legislation further solidified the forest department's hold over forest lands. Lands still recorded as revenue lands were managed by the forest department under their working plans. The rights of individuals over such lands were not investigated, and these individuals were often labelled as encroachers and forest destroyers.

Joint Forest Management

By the late 1980s, the debate between forest conservation and rights took a new direction with the formal introduction of Joint Forest Management (JFM). Under JFM, a forest block was allocated to nearby villagers for management, providing them with some income in return. However, this participatory approach was limited to 'management' alone, with rights over the forest land, such as grazing and minor forest produce, remaining under the department's control. This system often led to favouritism, arbitrariness and increased corruption, posing threats to the forests.

Furthermore, the Parliament introduced PESA in 1996, aiming to grant extensive powers to the gram sabhas in scheduled areas for better land management. However, its implementation was largely inadequate.

The debate between forest conservation and rights continued amidst these developments. On one hand, the state government lacked clarity on forest area demarcation, leading to confusion over land statuses.

On the other, it consistently denied people's rights over common lands declared as forests.

In 1996, the Supreme Court of India provided a definition for 'forest' in the case of T.N. Godavarman Vs. Union of India. The Court defined a forest based on its dictionary meaning and further clarified that areas recorded as 'chote jhad, bade jhad ka jungle' in Revenue records would be considered forests. This ruling halted all state government proceedings that de-notified or transferred forest lands to the Revenue Department.

To further illustrate the confusion between forest and revenue land, consider the case where a Mining Corporation filed a dispute against the office of the Divisional Forest Officer, Jabalpur. The adjudicating officer's findings highlighted the forest department's unlawful control over lands, showcasing the department's tendency to annex lands without proper notifications or checks.

This narrative underscores the ongoing struggle between conservation efforts and the rights of the people, a debate that remains unresolved despite numerous laws, notifications, and guidelines issued by the state government.

Chapter VI

New Developments

Merging Common Land with Forest Land

Prior to the forest regulations established by the princely states and the British Raj, forests didn't possess a distinct identity. They were generally perceived as part of wastelands. The former princely states in Central India had their own classifications for wastelands, which encompassed forest lands. This approach was consistent with that of the British Raj. Subsequently, when the British Raj first demarcated forests, the wastelands that were now classified as forest lands became government property. However, other wastelands that weren't designated as forests remained unused and barren. Amidst this transition, an essential aspect was overlooked: both in forests and in other wastelands (barren lands), a significant portion of the land was utilised by local communities as 'nistar' or common land.

While this common land was acknowledged by both the princely states and the British Raj in their respective revenue laws, its area gradually diminished for two primary reasons. Firstly, the designated forest lands encompassed sections of common land. Secondly,

lands that were previously barren or uncultivated were progressively transformed into cultivated areas. Both the Jamindars and the government displayed minimal interest in common lands, as these didn't yield revenue or possess the value akin to cultivated or forested lands. Consequently, the complexities surrounding revenue, common, and forest lands can trace their origins to this period and persist to the present day.

In essence, the proper categorisation of lands, whether they were wastelands, forest lands, or nistar lands, was inadequately executed. The various surveys, demarcations, and mapping exercises conducted by state entities proved ineffective. The myriad of proceedings and transfers only compounded the confusion, leaving the ground realities unchanged.

In a telling instance, the Chief Secretary of the Madhya Pradesh government acknowledged in a letter dated 4th June 2015 to all Revenue Commissioners that 'private lands have been annexed under section 4 of the Forest Act and designated as Reserve Forests', an action by the Forest Department not permitted under the Act.

Consequently, all district collectors were instructed to cross-check the land status in their records against those of the forest department and make necessary corrections.

This serves as a poignant example that even nearly six decades after the formation of the state of Madhya Pradesh, state agencies continue to grapple with this land categorisation conundrum.

Legal Framework

Beyond the categorisation of land—whether forest or revenue—it's imperative to grasp the overarching legal framework in India that addresses the issues of forests and the rights over them. Here, 'forest' encompasses the trees, forest produce, and the land itself. The present situation concerning these matters is shaped by this broader legal framework, which includes provisions from the Indian Constitution, legislation passed by Parliament, and various governmental notifications.

The Fifth Schedule of the Constitution provides special provisions for Scheduled Areas, notably in regions like M.P., Chhattisgarh, Odisha, A.P., and other Central Indian areas with significant tribal populations. From this provision, the concept of tribal governance autonomy emerges. Parliament enacted PESA to ensure autonomy/self-governance in these Fifth Schedule areas. PESA empowers the Gram Sabha 'to manage natural resources, including land, water, and forest, in line with its traditions and in harmony with the Constitution, whilst respecting the essence of other relevant laws currently in force.'

Yet, despite the constitutional mandate and various notifications affirming people's rights over forest resources, the lack of commitment from government officials has led to a chaotic and muddled situation. On the ground, implementing agencies seem perplexed about their actual responsibilities.

By introducing the Forest Conservation Act of 1980,

land intended for community use, which was mistakenly incorporated by the forest department into their working plan, was designated exclusively for the forest department. No legal process could alter this. Concurrently, the government endeavoured to recognise the importance of community participation in forest management through initiatives like JFM and PESA. However, these legislative efforts were not effectively implemented. As a result, land registered for community use since the British era was demarcated and categorised as forest land, with the community either marginalised or severely restricted. The forest's resources, which were once commercially utilised by the community, were now dominated either by the state or by agencies masquerading as co-operatives, ultimately benefiting private enterprises rather than the community.

Minor Forest Produce

In forested regions, many rely on non-timber forest produce (NTFP or minor forest produce/MFP) for their livelihood. This includes bamboo, brushwood, honey, wax, tendu leaves, medicinal plants, and more. These products are traded in village markets, significantly contributing to the tribal economy. PESA specifically mandates that the management of MFPs, including village markets, falls under the jurisdiction of Gram Sabhas. However, PESA's implementation on the ground has been lacklustre. The MFP industry in states like M.P. and

Chhattisgarh, with vast forested areas, garners significant attention from both the government and private sectors.

Forest Rights Act, 2006

To acknowledge the rights of individuals over forests, Parliament passed the Forest Rights Act in 2006. This legislation was designed to recognise and establish forest rights and occupations. The Act also provided definitions for 'forest land' and 'forest'. Two categories of individuals were identified: Forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD).

However, the government machinery misunderstood the Act's intent. Instead of recognising rights, they became embroiled in a complex process of verifying whether a tribe had occupied a specific forest land. This was not the Act's purpose. The Act's intent was to 'recognise' rights, which could have been easily achieved by examining existing government records.

It's been over a decade since this law was enacted, and aside from recognising the individual rights of FDSTs, neither the rights of OTFDs nor the community rights have been adequately acknowledged.

Epilogue

The evolution of land categorisation in India—encompassing wasteland, revenue land, and forest land—their origins, classifications, exchanges, demarcations, and the often lackadaisical record-keeping by government officials, coupled with policy non-compliance, has resulted in a quagmire of confusion that's challenging to navigate.

Furthermore, the systemic reluctance to acknowledge and honour the traditional rights of impoverished tribal communities has played a pivotal role in the erosion of these rights, whether pertaining to individual or communal lands. Despite the government's numerous schemes and policy declarations, these pledges largely remain unfulfilled, existing only on paper.

The documentation processes, from *Wajib-ul-arz* and *Nistar patrak* to contemporary *Adhikaar Patrak*, have been conducted with a degree of negligence, resulting in India's convoluted 'Land Record System'. The Forest Department's documents, such as the *Working Plan & Working Scheme*, lack checks and balances and are treated as sacrosanct, even when they often neglect the

needs of the community.

Amidst these documents and ground-level procedures, vast tracts of land have been left to the whims of government departments, with the dependent local communities often overlooked. Historical correspondence, even from recent years, acknowledges these discrepancies, highlighting the persistent challenges in land management.

Proposed Solutions and Recommendations

The revenue department's primary focus has been on individual lands, often neglecting communal lands. This perspective needs a shift. The recent push towards digital land record-keeping is commendable, provided it remains accessible to the public. However, this digital transition primarily focuses on inhabited lands and doesn't adequately address communal or wastelands, nor does it consider forest lands.

The forest department, rooted in a commercial and scientific approach, has historically prioritised the commercial use of forests over traditional rights and the socio-cultural fabric of the regions. Their methodologies and hierarchies remain outdated and often neglect the people and traditions within forested areas.

As India progresses, historical records become increasingly distant, making it challenging to retrieve older land and rights records. With vast lands in dispute, there's an urgent need for equitable growth and proper

land management.

Effective implementation of the Forest Rights Act 2006 is crucial, recognising that the rights stipulated within the Act are already documented in government records. Addressing land confusion is paramount, as it directly contributes to corruption, encroachments, and resource exploitation.

The states of Madhya Pradesh and Chhattisgarh have rich tribal histories. Despite their significance, their culture and contributions have been largely overlooked. Historical accounts reveal that tribal issues have been debated since the British era, yet these challenges persist. Various reasons have been posited for this oversight, from the nature of the Indian state to external influences. However, it's undeniable that as a nation, India has struggled to address these critical issues, which impact a significant portion of its population and its resources.

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