

MAPTENURE: ENABLING TENURIAL CLARITY FOR ORANGE AREAS OF CENTRAL INDIA

ROHINI CHATURVEDI, KARISHMA SHELAR, AND KRISHNA K SINGH

EXECUTIVE SUMMARY

Overlapping claims by the state revenue and forest departments to 1.2 million hectares of land in the central Indian states of Madhya Pradesh and Chhattisgarh (Garg 2016) have impacted at least 1.5 million families (ELDF 2018) that depend on land resources for food, fuel, and income. This lack of tenurial clarity as to whether land is revenue land or forest land is known as the “orange area” issue in the two states, previously unified as Madhya Pradesh (Figure 1), and includes areas where tenure has been ambiguous for decades. A large part of the problem is that the data required to resolve the uncertainty are dispersed, fragmented, and dated. Today, technology provides the means to collate and analyze necessary historical and spatial information and inform resolution of the orange area problem. MAPTenure, the first web-based platform of its kind, aims to bridge the gap by methodologically recording requisite data and leveraging the best available technology to enable tenurial clarity in the orange areas. The platform aims to play a key role in not only collecting the information but also in establishing one central, recognized, go-to source for information on the orange areas.

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Technical notes document the research or analytical methodology underpinning a publication, interactive application, or tool.

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APPENDIX A. HISTORICAL BACKGROUND

The root cause of tenurial ambiguity in the orange areas is dual control over the same land area by the Forest and Revenue Departments in unified Madhya Pradesh. This appendix provides an overview of how such conflicting control came to be and the measures taken so far to resolve the problem.

In the decade following India's independence, large swaths of forests and common lands that were previously part of princely states or the estates of revenue intermediaries such as *zamindars* and *malguzars* were brought under state control. In 1958, the Government of Madhya Pradesh declared these lands as "undemarcated protected forests" and entrusted their management to the state Forest Department.¹ The use of the term "undemarcated" implied that the requirements of boundary demarcation and recording and settling of rights had not been completed. Concomitantly, the Government of Madhya Pradesh developed a uniform system of land management that was enacted as the Madhya Pradesh Land Revenue Code of 1959. For the most part, this code applied to all revenue land in the state, which was essentially all lands

except those that had been declared protected or reserved forests according to the Indian Forest Act of 1927. The lands declared "undemarcated protected forests" were also included in the purview of the Land Revenue Code, to be administered by the state Revenue Department. Thus dual control was established over an estimated 9 million hectares (Mha) of land (Garg 2016). Over time, under various schemes to increase agricultural productivity, the Government of Madhya Pradesh issued *pattas*², or leases, for a significant part of these 9 Mha. These *pattas* were meant for cultivation, particularly by tribal and landless people.

In 1963, the Government of Madhya Pradesh initiated a time-bound process of survey and settlement.³ This process was jointly conducted by the Forest and Revenue Departments and involved village-level survey and mapping. It involved identifying lands to be excluded from forest areas, primarily (1) small pieces of lands that were inhabited and therefore needed to be excluded from forest areas and (2) areas that, although part of forest records, were needed for future expansion of villages, agricultural cultivation, and the subsistence requirements of the villages—or *nistar*.⁴

Figure A1 | A sample *patwari* map depicting the demarcation process in village Chhatarpur, district Betul, Madhya Pradesh. It depicts the forest areas in green before the demarcation process (left) and the areas marked as orange on completion of the demarcation proceedings (right).^a



Note: ^a Annexure 9 of *Ekta Parishad v. State of Madhya Pradesh and State of Chhattisgarh* 2003.

At the same time, lands with standing forests or surrounded by a forest area but not included in forest areas were to be identified as forests (*Ekta Parishad v. State of Madhya Pradesh and State of Chhattisgarh* 2003). At the village level, maps were prepared by *patwaris*⁵ to indicate all the revenue land to be given to the Forest Department. All areas declared as forests through blanket notifications were colored green, and subsequently areas that were to be handed back to the Revenue Department (to be left out of forests) were colored orange—these came to be known as the “orange areas” or the “left-out areas” (Garg 2005). In the absence of a legal provision for the transfer of land from the Forest to the Revenue Department, the Indian Forests Act of 1927, as applicable in Madhya Pradesh, was amended⁶ by introducing Sections 20-A⁷ and 34-A⁸.

Once the demarcation process was complete, the *patwari* ceded the village maps and the survey and demarcation proceedings to the designated revenue and forest officials. It was expected that the revenue and forest records would be corrected on the basis of the changes made to the village maps (*Ekta Parishad v. State of Madhya Pradesh and State of Chhattisgarh* 2003). This implied that the jurisdiction of the orange areas would be transferred to the Revenue Department under section 34A and the green areas would be retained or added to the Forest Department (Figure A1).

The process of survey and demarcation took several years to complete. In 1972, the Government of Madhya Pradesh issued a series of notifications.⁹ First, it designated entire villages as having no forest areas (hereinafter referred to as “totally de-notified villages”). By the Forest Department’s own estimates, approximately 31,485 villages in unified Madhya Pradesh were totally de-notified (Government of Madhya Pradesh 1976). Second, it designated plots or portions of plots of land as having no forest area (hereinafter referred to as “de-notified plots”). Through this process, 1.5 Mha of land was transferred to the Revenue Department between 1966 and 1976 (Government of Madhya Pradesh 1976).

More than 1.2 Mha were double-counted in revenue and forest records until as late as 1994 (Ashok Masih 1994).¹⁰ Although detailed notifications were issued, the land records were not fully amended to incorporate the transition from forest to revenue. The matter was further complicated because the de-notified lands were distributed and allotted even though the processes of settlement and updating of records were incomplete.¹¹ Most of the beneficiaries of this land allotment were tribal, landless, and other marginalized groups. And while according to revenue records they were legitimate occupants, according to forest records they were encroachers.

While the processes of de-notification and distribution were ongoing, the large-scale felling of trees on revenue lands and the launch of the *Adhikar Abhiyan* (loosely translated as “Drive for Rights Recognition”) disrupted the process. The tree-felling reports from the Hoshangabad district of Madhya Pradesh indicated that areas suited for forest cover had not been fully identified as forests in the survey and demarcation process. Accordingly, a second survey was ordered to include lands with good tree cover as forest areas. This continued until 1988 and resulted in the notification of forest areas. At the same time, the *Adhikar Abhiyan* was launched in Madhya Pradesh to convert leases to ownership, or *bhoomiswami* rights. As part of this, the Revenue Department distributed government land, including the orange areas, and people took possession of this land. Once again, however, the Forest Department neither complained nor changed its records, nor did the Revenue Department make the necessary changes to the land records.

In the late 1980s and 1990s, two critical transitions were evident in the forest sector in India. First, with the Forest Conservation Act of 1980, decisions on diversion of forest land for nonforest purposes such as agriculture, infrastructure development, mining, and other uses were brought under the purview of the national government (Chaturvedi 2016). As a result, the decision-making powers of the state governments to de-notify forest lands were curtailed by law. The Forest Conservation Act of 1980 impacted orange areas when the Supreme Court of India decided, in 1996, that all land recorded as forest, irrespective of ownership, would be brought under the purview of this legislation. The forest departments were instructed to evict encroachers, including occupants of land double-recorded as forest and revenue. The second transition revolved around recognition of the claims of communities living in and around forests and policy action to address conflict and contestation in forest areas. In 1988, for instance, the Forest Department in Madhya Pradesh appointed 10 forest settlement officers to listen to disputes and objections in the orange areas. A national-level interministerial committee also deliberated on the matter; on the basis of its recommendations, the Ministry of Environment, Forests and Wildlife directed the Madhya Pradesh government to ensure that *pattas* and grants made to tribal and rural poor were honored (Department of Environment, Forests and Wildlife 1990). It further directed that district-level committees be formed to resolve disputes at their earliest stage. The Government of Madhya Pradesh also started the process of survey and settlement in 1990 and 1994, but with the advent of the 1996 judgment, these remained ineffective.

ENDNOTES

1. Land ownership and governance in India operates through an extensive legal framework that determines the management of revenue territory. In India, land ownership and land use must be understood as two separate frameworks of governance but with multiple overlaps. This means that forest land is land under the jurisdiction of a state forest department but could be utilized for agricultural or industrial purposes. Similarly, land governed by a revenue department could be agricultural, could have forests, or be common/*nistar* land. Each department also maintains its own territorial organization to govern its land. Both revenue and forest lands are governed by separate laws under the Indian constitution.
2. Entire villages that were issued gazette notifications designating them as having no forest area are referred to as "totally de-notified villages" in orange area parlance.
3. Since the first set of gazette notifications with the village survey numbers were issued in 1972.
4. Since a subdistrict, a district, and a state may have multiple villages of the same name, a survey number is used to identify each village. It is also referred to as the settlement number or general number.
5. The *Khasra* is the basic village form in which the description of every plot (that is, the name of the owner, area, land use, and the different subcategories of land use such as the type of crop, whether the land is irrigated or not, and the types of trees on the land) is entered. The *Khasra* is rewritten every fifth year in the prescribed form. It is provided for every plot in a cadastrally surveyed village and is filled out by the *patwari* after local enquiry and field inspection (Mehta 2002). The *Khatauni* is a ledger with individual land records, where the records of all the landowners in the village are listed with their names and *Khasra* number.
6. The masterlist of present-day villages is available at <http://landrecords.mp.gov.in/index.htm> (Madhya Pradesh Land Records Department 2018).
7. The *patwari* is in charge of keeping the records at the village level. This person maintains land records, statistical data, and land measurements of the village. She or he could be holding records of one to four villages, a cluster called a *halka*. The *patwari* is the interface between the landholder and the state revenue department.
8. The work of the *patwari* is supervised by the revenue inspector, who is the next highest functionary. A revenue inspector's circle may contain 80 to 90 villages, grouped into 15 to 19 *patwari* circles.
9. Bhu Abhilekh is a Government of India web portal to digitize land records: <http://mpbhuabhilekh.nic.in/bhunakshaweb/>.
10. Accuracy of 85 percent is estimated from this process.
11. For more information on the Forest Department, go to its website: <http://www.mpforest.org/Intranet/intranet.aspx>.
12. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 (also called the Forest Rights Act) "recognizes and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land."

APPENDIX A ENDNOTES

1. This was done through blanket notifications such as Notification no. 9-X-50, dated July 10, 1958.
2. A *patta* is a land revenue record that establishes the title or ownership of land. The Patta Register is maintained at the subdistrict office and contains ownership details of all landholdings.
3. A survey is an operation carried out to bring the records of an area up to date and pertains to revision or correction of field maps, division of land into survey numbers, recording of old survey numbers, and power to renumber or subdivide survey numbers, groupings of villages to form *tahseels* or districts, and preparation of record rights of an area.
4. Land set apart for exercise of *nistar* rights may be timber or fuel reserve; pasture, grass, *bir*, or fodder reserve; burial ground and cremation ground; *gaodhan* or village site; camping ground; threshing floor; bazaar (market); skinning ground; manure pit; public purposes such as schools, playgrounds, parks, lanes, and drains; and any other purpose that may be prescribed (Ramanathan 2002). *Nistar* lands consisted of tree cover categorized as *nistari van* (open forest), *malguzari/zamindari van* (forests on land owned by *zamindars* and *malguzars*, revenue *van*, *bade jhad ke jungle*, *chote jhad ke jungle*, *ghas* (grass), *charmoi* (grazing), and *charagah* (pasture).
5. Ramanathan 2002, vi.
6. See Madhya Pradesh Act 9 of 1965, sec. 6 (w.e.f. 20-3-1965).
7. Forest recognized in the merged territories as village forests or protected forests, or forests other than reserved forests, by whatever name designated or locally known, shall be deemed to be protected forests.
8. The state government may, by notification, direct that from a date fixed by such notification, any forest or portion thereof protected under the act shall cease to be a protected forest.
9. One such notification being Government of Madhya Pradesh (1972).
10. Between 1966 and 1976, approximately 1.5 Mha of land was transferred to the Revenue Department by the Forest Department (Government of Madhya Pradesh 1976). However, no changes were made to the revenue records to reflect this transfer (Garg 2005).
11. In 1976, a Madhya Pradesh government cabinet note directed the district administrations to issue *pattas* on the 1.9 Mha of land demarcated to be transferred to the Revenue Department but awaiting de-notification under Section 34-A.

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