

Cambridge-Harda project policy paper 02

Rights issues in the forest

Rights over land, especially for cultivation, are an important and contentious issue in the context of forestry and livelihoods. This paper summarises the views expressed by project respondents on three specific issues that are currently controversial in the forest and land rights debate in the country – the question of ‘encroachment’ on forest lands; the entitlement of tribals to usufruct from the forests for their domestic needs (also known as *nistar*); and the issue of conversion of forest lands to revenue lands.

‘Encroachment’ of forest lands

- The term ‘encroachment’ is used to describe the use and cultivation of forest lands by local populations without proper legal entitlement or *pattas* over such land. The Supreme Court has taken a stringent view on this issue, and this has resulted in steps to evict tribals from such encroached lands. A recent order (December 2004) has asked State Governments to stop this process of eviction. However, opinion on the issue of encroachment remains divided.
- Our village studies from Harda suggested that local people felt that powerful villagers, who had the support of the Forest Department, were carrying out most of the encroachment.
- Opinion on encroachment was divided in the Forest Department. Whereas some respondents felt that encroachment had been limited, and had decreased due to irrigation facilities and increased awareness, others observed that it was still a serious problem, and was increasing because of policy initiatives to regularise encroachments.
- Forest Department respondents felt that the problem of encroachment was being aggravated because of vote bank politics and a lack of political vision and leadership. In the field, officials said that even village-based Joint Forest Management committees were unable to control encroachment, since the culprits were often well connected or related to the committee members, and were able to exercise influence at the local level.
- Amongst Mass Tribal Organisations (MTOs, or *Sangathans*), a majority of respondents saw the issues of encroachment of forests and land rights as the major causes of conflict in the area. The *Sangathan* members felt that forests belong to the tribal people as they had resided in the forests for generations and conserved them, they had strong cultural ties with forests and had been using the forest resources traditionally. All *Sangathan* members were extremely critical of the encroachment removal policy of the government and the way it had been implemented, and demanded regularisation of all encroached land through secure leases (*pattas*).
- For the MTOs, forests are not a stand-alone issue, but are part of a more general struggle for the recognition of tribal rights over water, forest and land resources (*jal, jungle, jamin*). An

overwhelming majority of our respondents from this group felt that providing rights over land for cultivation would be an effective way of resolving conflicts in forestry. They demanded the allocation of 5 acres of land to all adults above the age of 18. They were convinced that their struggle would lead to an outcome in which tribal people would eventually enjoy unfettered rights over 'their' forests.

- The NGO respondents, on the other hand, felt that there was a need to balance both conservation and livelihood needs. While they were sympathetic to the cause of farmers who did not have ownership rights over the land they were cultivating, they did not agree with the demand of regularising all

encroachments, because of pressures due to over-population. They proposed shifting groups to forest fringes, to reduce pressure. They also accused *Sangathan* members of promoting illegal felling in the forest areas in order to encourage encroachment.

- Most of the legislators argued that people, especially tribals, have the first right over the land, and that this needs to be recognised. They believed that encroachments should be regularised, but only after following a due process. In their view, existing settlements of encroachment were not being done properly, and some respondents were not happy with the demarcation of forest boundaries.

'Nistar'

- Rights to bonafide use of forest products (*nistar*) were admitted as rights in revenue records in Madhya Pradesh. These have been progressively diluted, first to privileges, and then to concessions, subject to the availability of material. Enactments such as the M.P. Protected Forest Rules, 1960, and M. P. Disposal of Timber and Forest Produce Rules, 1974, recognised the legal basis of *nistar* but regulated its practice as a privilege. Subsequently, the Nistar Policy and the Joint Forest Management resolutions of the state have further diluted these privileges to concessions and favours.

- Our village studies from Harda suggested that local people found that meeting their *nistar* needs was very difficult. They tended to avoid *nistar* depots, which had been set up by the Forest Department, because of distances as well as because of the poor quality of forest produce that was made available. There were also significant transactions

costs associated with obtaining material for *nistar* from the depots.

- Villagers felt that the overall availability of material for *nistar* had reduced. Women, in particular, stated that they were facing an acute shortage of fodder, fuelwood and water in many villages, and the time that they spent in collection had increased. However, in some villages, our respondents suggested that there had been a marginal improvement in availability.

- At the local level, the forest committees were now controlling everyday access to the forests, and this meant that villagers were facing fewer restrictions on access for meeting their *nistar* requirements. The decrease in the number of Preliminary Offence Records (PORs) was cited as evidence that the Forest Department was adopting a more permissive attitude to *nistar*. However, some respondents suggested that conflicts within villages and between

villages were increasing because committees were restricting access for some users.

- Women also reported that they were often involved in conflicts relating to *nistar*. However, they argued that their association with the local Mass Tribal Organisation (MTO) had helped them overcome some of the harassment which they had earlier experienced at the hands of the Forest Department staff while meeting their *nistari* needs.
- The Forest Department agreed that *nistari* rights had been converted to privileges, but argued that this was primarily because there was an imbalance between the demand and supply of forest produce for such needs.
- The MTO respondents argued

that over time, forest policy had resulted in increasing restrictions on people's access to forests. What had been taken away was very substantial, but what had been given back to the people was very limited. They cited increasing difficulties because people were no longer allowed to load *nistari* materials on bullock carts, and had to make repeated trips to the forest. They also argued that *nistari* depots were inconveniently located, resulted in higher costs, and the material available was of poor quality.

- Non-governmental organisations (NGOs) and legislators argued that there was an urgent need to make the Nistar Policy more people-centred.

Conversion of forest villages to revenue villages

- In Madhya Pradesh, there are a number of “forest villages” which exist within Protected and Reserve Forests. These are administrative categories, not falling under the jurisdiction of the Revenue Department, and are thus deprived of various developmental inputs. In these villages, the Forest Department takes the lead in developmental activity. In Harda, there are 45 such forest villages. There are diverse perceptions on the need for converting such villages to revenue villages, and the implications of such conversion.

- Most village respondents supported the conversion of forest villages to revenue villages, as they felt this would bring them more benefits. Some villagers had a different view, arguing that conversion may lead to a loss of employment from forestry

operations, and that they would be subject to greater harassment from government departments. They argued that under the current regime, they only had to satisfy the demands of the Forest Department, but after conversion they would have to deal with many more departments.

- The field level Forest Department staff perceived differences in the challenges of working in revenue and forest villages. In the case of forest villages, since these were completely dependent on the Forest Department for their developmental needs, the department felt a sense of ‘ownership’ and ‘responsibility’ towards these villages. Moreover, they argued that the forest village community was attached to the Forest Department. In the case of the revenue villages, however, the dependence on the Forest Department

and the resource was believed to be lower, which made them more difficult to work in.

- Many *Sangathan* members felt that all forest villages should be converted to revenue villages, because people in forest villages did not have secure land rights, and the Forest Department was not taking good care of the people (they cited an outbreak of malaria in a forest village, which had killed many young children, as evidence). Some village level *Sangathan* members, however, did not want conversion due to the fear of increased harassment by government officials, and loss of employment opportunities (in

forestry works).

- Some NGO respondents were of the opinion that conversion of forest villages to revenue villages would result in an increase in population and lead to greater forest destruction, and should not be encouraged.

- The legal analysis shows that the process of conversion is lengthy and tedious, and there is no guarantee that it would automatically result in more secure land claims. Any such process would also be subject to on-going proceedings in the Supreme Court on forest-related issues.

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