

INDIGENOUS PEOPLE'S RIGHT TO LAND IN ODISHA: A STUDY

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ABSTRACT

Land and resource-related rights are of fundamental importance to indigenous peoples for a number of reasons, including religious significance, self-determination, identity, and economic factors. Land is a prime economic asset of indigenous peoples. The majority of indigenous peoples live in forest areas, depend on agriculture for living and collect minor forest produces to fulfill their subsistence needs. Land and its systems attain much importance in their life, which is a network of human relationship, pertaining to the ownership and harmonious relationship with land. This has everywhere been major factor determining the socio-economic and political order. Ownership of land in case of Scheduled Tribe enhances their social status. Tribals use their land for three purposes, firstly it is used as the source of food gathering and hunting, secondly it is used as a place to reside and lastly to cultivate. In the year 1920, firstly The Indian Forest Act was passed thereby turning all Adivasi forest land as government owned. This delegitimised the traditional community ownership systems in Adivasi (tribal) societies. This paper attempts to analyse the different aspects of land rights among the Adivasis of Odisha. Despite elaborate provisions in the Indian constitution and other laws more than 15 percent of Adivasis have been displaced without any comprehensive rehabilitation efforts.

Keywords: Indigenous People, Land Rights, Self-Determination, Human Relation, Rehabilitation

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Introduction

Indigenous land rights are the rights of indigenous peoples to land, either individually or collectively. Land and resource related rights are of fundamental importance to indigenous peoples for a number of reasons, including the cultural and religious significance, self-determination, identity, and economic factors. Land is a prime economic asset of indigenous peoples. The majority of indigenous peoples live in forest areas, depend on agriculture and collect the natural resources to fulfil their subsistence needs. Land and land system assumes much importance in their life, which is a network of human relationship – pertaining to the control and use of the land has everywhere been major factor conducting the socio-economic and political order of the day. Ownership of land in case of Scheduled Tribe enhances their social status. Adivasis use their land for three purposes, firstly it is used as the source of food gathering and hunting secondly it is used as a place to reside and lastly to cultivate (George and Sreekumar 1994).

There are 67.7 million Scheduled Tribe (ST) people in India generally known as 'Adivasis' – literally meaning 'indigenous people' or 'original inhabitants'. Though the term Scheduled Tribe is not coterminous with the term 'Adivasis', it is a term used for administrative purpose in order to deliver certain specific constitutional privileges, protection and benefits (Prasad and Sinha 2014: 231). On December 18, 1992 the United Nations resolution 164 declared 'the year of the world's indigenous people.' This was broadly aimed at strengthening international cooperation to address the problems faced by the indigenous people all over the world in the field of human rights, environment, health, education and development, which drew the attention of academics and development planners, and induced them to pay a serious attention to the indigenous communities and the problems faced by them. Simultaneously, it was realised that the top down planning strategy had till date failed to yield any tangible result. A bottom-up strategy of development emerged with emphasis on indigenous culture and knowledge.

In Odisha most of the Adivasi people live in the forest and hilly regions where they traditionally carry out both settled and shifting cultivation. On the other hand Odisha is extremely rich in minerals, and water resources most of which lies in the hilly tracks of tribal districts. Due to the existence of huge amount of minerals a large numbers of mines and industries are established by the government and multinational companies. The major industrial projects taken up in Scheduled Areas have been Raurkela Steel Plant, NALCO's Alumina refinery at Damanjodi, HAL in Sunabeda, UAIL alumina refineries in Kashipur and Vedanta at Lanjigarh. Availability of large number of water sources in these areas invite the attention of the government to construct major dams such as Machkund, Salandi, Balimela, Upper Kolab, Indrawati, Mandira etc. The richness of forests and wildlife has also led to increasing number of protected areas (wildlife sanctuaries and National parks) in the Scheduled Areas of Odisha. Such protected areas have created a major problem as the rights of all inhabitants in and around these areas are dismissed, affecting their livelihoods and sometimes leading to displacements.

Objectives of the study

- To identify the factors of Adivasi land rights and alienation.
- To explore positive and negative impacts of the existing legal and regulatory framework on tribal lands.

Historical Perspective

From ancient times, Adivasis did not have the system of individual ownership over land in India. However, during the two centuries of British rule (1757–1947), India's traditional land ownership and land use patterns were changed with the concept of 'private property.' This began with the Permanent Settlement in 1793 and the establishment of the Zamindari system, which prevailed in most of northern India. By default the Zamindars (feudal lords) were owners of large tracts of land, who in turn had to pay fixed revenue to the government. Thus peasants became tenants on their own land and had to pay rent for the same. In south and west India, the Ryotwari system existed. Individual cultivators (ryots or raiyats) were deemed as proprietors of land against revenue payments. They had rights to sub-let, mortgage and transfer land. A third system of Mahalwari existed, whereby entire villages paid revenue, with farmers contributing their share in proportion to their holdings. In 1920, British government passed 'The Indian Forest Act,' making all forest land as government owned. This de-legitimised the traditional community ownership in Adivasi societies (PACS Undated).

Throughout the history, Adivasis fought for their land but the British treated these rebellions as part of the 'national' struggle for independence – from the Malpahariya uprising in 1772 to Lakshman Naik's revolt in Odisha in 1942. The ruthless exploitation of Adivasis emerged into a strong discontent, culminating in many rebellions. The legacy of these struggles for land can be traced back from more than two hundred years. Some prominent struggles like the Chhotnagpur tribal revolt (1807-08), the Munda rebellion (1832, 1867-90), the Kolha rebellion (1831-32), the Santhal rebellion (1885-86), the Rampa rebellion (1879-90), the Madrri Kalo revolt (1898), and Munda rising (1936-39) in Sundargarh are worth note. Leaders like Birsa Munda, Sidhu and Kanhu Santhal, Khazya Naik, Tantya Bhil, Lakshman Naik, Kuvar Vasava, Rupa Naik, Thamal Dora, Ambul Reddi, and Thalakkal Chandu repeatedly rebelled against the British (Ota, Patnaik and Gamanga 2010: 2-3). The relentless struggles of Adivasis compelled the British government to introduce some legal measures to contain the growing discontent.

Tribes of Odisha

According to the 2011 census the population of Odisha is 41974218 where is the ST population is 9590756 which is about 22.84 percent of the total population. 62 tribal communities have been listed as Scheduled Tribes of which thirteen have been recognised as 'Primitive Tribal Groups' (GoOD 2015). Nearly half the State's area (44.7%) is under Schedule V of the Indian Constitution. These tribes mainly inhabit the Eastern Ghat hill ranges, which run north-south direction. Half of the tribal

people are lived in the three districts (Undivided Koraput, Mayurbhanja and Sundargarh) (Kumar and Choudhary 2005: 13).

Table-1

Major Tribes and their concentration

SL. NO.	Name Of The Tribe	Numers of tribe	Area of Concentration (District)
1	Khondh	1627486	Keonjhar, Kondhamal, Samalpur, Bolangir, Koraput, Ganjam and Sundargard
2	Santal	894764	Mayurhanj, Balesoar, Keonjhar, Sundragard
3	Gond	888581	Naarangpur, Bolangir, Koraput, Kalahandi, Sundargard
4	Kolha	625009	Keonjhar
5	Munda	558691	Jajpur, Sambalpur
6	Saura	534751	Bolangir, Bargard, Koraput, Ganjam, Ryagada, Gajapati
7	Sabar odha	516402	Khurdha, Puri and Cuttack
8	Paraja	374628	Koraput, Kalahandi and Sundargard
9	Oraon	358112	Sambalpur, Sundergard, Raygada, and Keonjhar
10	Kissan	331589	Sundargard, Sambalpur, Keonjhar

Source: Government of India, Census 2011

The Kondha or Kandha is the largest tribe of the state, with 1627486 population followed by Santhals (894764) and Gonds (888581). Kondhas are based mainly in the Kandhamal and adjoining districts namely Rayagada, Koraput, Balangir and Boudh. They are an agricultural tribe, and carry out both settled and shifting cultivation. The Santals inhabit mostly in Mayurbhanj district, while the Gonds are settled cultivators located largely in Nabarangpur district (GoOD 2015). The Saura, with a population of 534751 are found mainly in the undivided Ganjam and Puri district. Perenga, Didayi, Bondo, Dharuas are tribes in Southern Odisha, who practice shifting cultivation. The Bondas have a population of about 12598 and live in Malkangiri district.

Definition of Land Rights

Schlager and Ostrom (1992) say 'land rights broadly defined can be understood as a variety of legitimate claims to land and the benefits and products produced on that land.' Agarwal (1994: 19) defines land rights as 'claims that are legally and socially recognized and enforceable by an external legitimized authorized, be it a village-level institution or some higher-level judicial or executive body of the State' (Agarwal 1994:19). The land ownership rights is guaranteed in the ILO Convention No. 107 on Indigenous and Tribal Populations of 1957, revised as ILO Convention No.169 of

1989, and further in UN Draft Declaration on Indigenous Rights (Sahoo 2005: 4). All these recognises the ownership rights of Adivasi people, protection of natural resources, assurance of indigenous peoples' participation and take consent before using, managing or any conservation of their resources. Any such development or exploration and exploitation has to be in consultation with the Adivasis and other indigenous groups.

Provision of Constitution of India on Land Rights

- Articles 23, 38 and 39 under the Indian Constitution allow states to make their own Zamindari Abolition Acts, abolish Begari (free labour) and redistribute land and community resources (such as ponds, lakes and forests).
- The Agricultural Land Ceiling Act – These state-wise Acts limit the maximum area that one landholder can own to minimise inequality in land ownership. All surplus land should be distributed among landless and marginal farmers.
- The Forest Rights Act (2006) – This Act overrides the 1920 Indian Forest Act, allowing tribal communities and forest dwellers to apply for the rights to forest land that they have been living on and using for generations (PACA Undated).

However, these legislations have not led to substantial progress towards equitable land distribution. Most landowners still hail from upper castes, cultivators from the middle castes and agricultural labourers from Dalit and Adivasi groups.

Land Reforms in Odisha

Odisha enacted a number of progressive land reform laws in the post-independence era. The state government prioritised providing land to the landless to achieve economic development along with social justice for the weaker sections of the society.

- The Odisha Land Reforms Act (1960) is regarded as watershed legislation in giving secure land tenure to the landless.
- The Odisha Government Land Settlement Act (1962) emphasised land allocations to the landless.
- The Odisha Prevention of Land Encroachment Act (1972) regularised the status of landless families occupying government land by granting them title to that land.
- The Land Ceiling Act (1974) aimed at acquiring surplus land from the landed peasantry and redistributing it to the landless.
- The sequence of events of early 1970s in Odisha indicates that both the political orientation and will was directed towards bringing in socio-economic justice through equitable distribution of land and more specifically, by providing land tenure security (Rout 2015: 145).

However, amidst this wide range of progressive land reform laws, significant biases prevented tribals from acquiring land rights. Scholars believe that during the initial

days of land reforms, secure tenure to ryot (farmer) was given importance over land rights of Adivasis.

Violation of Land Rights and Forms of Adivasi Land Alienation

As a general rule, Adivasis are not considered as unclean by caste Hindus in the same manner as Dalits are. However, they continue to face prejudice (as lesser humans); they are socially distanced and often face violence from society. They are at the lowest point in every socio-economic indicator. Today the majority of the population regard them as primitive and aims at decimating them as peoples or at best integrate them with the mainstream at the lowest rung in the ladder.

The question of land is not just a result of the abovementioned situation but its origin may be traced to the periods of deprivation of tribal lands or to periods of withdrawal of rights over forest. Due to various structural changes within and outside the tribal systems, the more advanced groups forced Adivasis either to retreat to the nearest jungles or to become landless labourers. Land being the only source of livelihood, Adivasis were severally deprived when they were disposed off. Moneylenders, traders, feudal lords and rich peasants exploit them the most (Prasad and Sinha 2014: 220). It is an established fact that there is a large-scale alienation of lands which belong to the tribes and grabbers invariably in all cases are the non-tribes. This phenomenon has further been ruined by the emergence of new forces of production. In 1980, the National Commission on Backward-Areas Development commented, 'in a number of areas new industrial and mining complexes, many major irrigation projects were located in the tribal areas resulting in the submergence of extensive lands belonging to the tribals.'

In the operations to decimate forests massively, tribal labour had been used. This was a method of the landlord class to alienate the tribals from the forests. This further widened the gap between the tribal landless and landed gentry of the non-tribal communities. The Committee on Plan Projects, Planning Commission, presented a report on the Tribal Development Programmes in 1969 with critical comments on tribal land alienation. The committee noticed that tribal lands in many areas passed into non-tribal hands happened notwithstanding the legal provisions. Sample studies of Andhra Pradesh, Orissa and some other States have shown that transfers have taken place on large scale without the permission of the collector or other competent authorities as required by law.

Tribal Land Acquisition for Government Projects in Odisha

Tribal people loss their land for different government project such as national highways, railway tracks, mines, industrial and dam projects. The maximum numbers of tribal displacement took place in three ways (i) Dam projects (ii) Mines and Industrial Plants (iii) wildlife sanctuaries and National parks.

(i) Acquisition for Dams in Odisha

- The Multipurpose Hirakud Dam project started in 1946. It submerged 167376.83 acres of land. It affected 22144 families, which consist of a

population of about 1.1 lakhs population. Of this 18.34 percent were ST (1636 families of 249 villages) from the Sambalpur district and 36 villages adjoining Raigarh district of Madhya Pradesh (presently Chhattisgarh) (Garada 2015: 91).

- Early 1940s the inter-state Machhkund Hydel Project in Koraput not only caused a huge volume of human displacement of Adivasis and Dalits, but also equally affected ecosystem, along with life and livelihood of the affected. Out of total 2938 displaced families, only 20 percent were rehabilitated and that too no displaced Dalits were rehabilitated at that time (Behera 2012).
- Upper Kolab multipurpose project in Koraput district on river Kolab in 1984-85 had submerged 32163 acres of land affecting 13095 families (50771 persons) – of which 2127 families (8830 persons) were Dalits, 7092 families (26620 persons) were Adivasis and 3882 families (15327 persons) were from other caste. There were Kandha families from 149 villages (Dash 2008: 666).
- The Upper Indravati Hydroelectric Project acquired 32530.87 acres of land, 5448 families (total population of about 17000) have been displaced from their home. 97 tribal villages (44 from undivided Koraput and 53 from Kalahandi) have been affected, with 65 villages fully submerged (Dalua 1993).
- The Balimela hydro-electricity project (1962-1977) displaced 2000 tribal families in Koraput district. It affected 5,448 families were displaced.

(ii) *Land Acquisition for Mines and Industrial Plant*

- Mahanadi Coal Fields Limited (MCL) acquired 1782.20 ha. of land in the Ib Valley area, five open cast mining projects are in operation affecting 19 villages, involving a total number of 1306 families out of them 130 families of 2 villages have been entirely displaced. A total of 90 families were displaced (homestead oustees) (Mohanty 2011: 69).
- Odisha Government has signed up with the Vedanta Resources of UK for extracting aluminium from bauxite in Niyamgiri Hills. A total of 1444.666 hectares of land was to be acquired from the Dangaria Kondhs of Kalahandi district affected 2500 families in 24 villages in three Gram Panchayats namely; Chandragiri, Maikanch and Kodipari (Singh 2015: 434).
- Kalinganagar has 12 companies such as MESCO, Orion, Maithan Ispat, Uttam Gala, K.J. Ispat, Dinaandhu, TISCO, Rohit Ferrotech, Neelachal Ispat Nigam (NINL), Jindal Stainless, Visa Steel and Maharashtra Seamless comprising 12000 acres of land covering 83 revenue villages in 10 Gram Panchyats of Jajpur district. Hundreds of families have been displaced and many more are expected to be moved in the future (Mishra 2006: 551).
- Utkal Alumina is an aluminium company in Kashipur Block of Rayagada district, for which an estimated 1750 hectares of land will be required for mining. 2100 families in 24 villages stand to lose their land, including 370 families who would lose all their lands (Sahoo 2005: 4).

(iii) Wildlife sanctuaries and National parks

Odisha has almost 8111.55 sq. km. (5%) of protected areas (Sanctuaries and National Parks). Most of these protected areas are in the Scheduled V areas or in areas with large tribal population. The Wildlife Protection Act, 1972 restricts almost all activities inside Protected Areas. These include restrictions on entry to sanctuary (Section 27), removal of forest products including NTFPs (except for bonafide self consumption), regulation or prohibition of grazing or movement of livestock etc. This effectively evicts people living inside the protected area due to restrictions on movement of goods and services. More than 700 villages are still inside the existing sanctuaries (Kumar 2006: 51).

Concluding Observation

Land is the only tangible asset of a tribal family, other possessions being meagre at the present stage of their economy. Land is much more than a source of livelihood, which occupies a pivotal place in Adivasi psyche. There are a number of socio-cultural and religious factors connected with land, which establish emotional ties too. One of the important characteristics of a tribal community is the traditional association with a territory, where they hunted and gathered food.

As the pressure of population grew and the community acquired the new skills of agriculture, they cleared the forest and began cultivation. The individual tribal considers himself as owner of the land he occupies by virtue of his traditional association and his personal effort in making it cultivable. However, several tribal areas of Odisha experienced unrest in the wake of exploitation by non-tribal traders, moneylender, immigrant farmers, and government or private organisations. Non-tribals grabbing tribal land by deceitful methods is the worst form of exploitation. Ironically, the process of development in tribal areas has brought non-tribals, government and non-government institutions and organisations into tribal habitats leading to greater exploitation of tribal people and alienation of tribal lands. Some measures needs to be taken to minimise these trends. They are –

- The land rights legislations should be translated in simple local language so that people could understand it easily.
- The role of district collector and government revenue officers should be to identify and notify the tribal areas, make the proper documentation and provide them land deed (*patta*).
- Proper rehabilitations measures need to be inserted in the MoU between the government and any company before displacement of tribals. Provision such as maximum job opportunities to the affected tribal people in any projects area should be made mandatory.
- The police and administrations should investigate any allegation of violation of tribal land rights.
- Media should frequently visit tribal areas and publish problems they face in regular intervals.

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