



Owning the Land: Significance of Tenancy Laws in Jharkhand

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Abstract

Land and forests have been the mainstay of Adivasi lives. More than valuing nature for their economic use value, the adivasis have lived in harmony with nature and practiced subsistence living. Land for them has never been a piece of property to be owned privately, but the communities have owned it collectively and therefore land has become such an important part of the Adivasi lifeworld. Some of the well-known Adivasi movements in India emerged in today's Jharkhand, fighting for their rights over *jal* (water), *jangal* (forest) and *jameen* (land). The present paper examines the significance of the tenancy laws namely the Chotanagpur Tenancy Act and Santhal Parganas Tenancy Act, for the tribal population of Jharkhand. After independence, the Bihar Land Reforms Act 1950 abolished all intermediary tenure holdings, but the tenancy laws in the tribal areas of present Jharkhand were exempted. In the name of development, the state governments have tried to amend the Acts a few times but have met with strong resistance from the people. These colonial acts which were used by the British colonisers to appease the tribals functions as a weapon to protect the tribals against the imperialistic tendencies of the present state. The paper briefly reviews the tenancy laws in Jharkhand and argues that these laws have been crucial for the tribal population. The arguments are based on the study conducted by the author during her doctoral study.

Keywords: Tenancy, Chotanagpur, Santhal Parganas, Jharkhand, Customary laws, land rights

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Introduction

May 2016 saw a huge upheaval in the State of Jharkhand in response to the Tribal Advisory Council's (TAC) amendment of the Chotanagpur Tenancy (CNT) Act 1908 and the Santhal Parganas Tenancy (Supplementary Provisions) (SPT) Act 1949 through ordinances. Along with the opposition parties (JMM, JVM, Congress, RJD and CPI(ML)) and the adivasi organisations like Jharkhand Adivasi Sangharsh Morcha, Adivasi Jan Parishad, Adivasi Budhijeevi Manch opposing the move, the Adivasi MLAs of BJP-Shivshankar Oraon and Gangotri Kujur also cried foul alleging that their consent was not taken into account in the TAC meeting (Dungdung 2016). According to then Chief Minister Raghubar Das, the spirit of the Acts had not been touched, and the amendments would benefit the Adivasis. The commercialisation of lands will allow the adivasis to use their lands for non-agricultural purposes, and it will result in the development of the Adivasis.

The 2016 amendments failed to receive the consent of the President and were therefore shelved; however, it was not the first time that such an attempt was made to amend the tenancy law in Jharkhand. One of the earlier amendments had already allowed the state government to use adivasi lands for mining and other infrastructural development.

Jharkhand was formed into a separate state comprising of the tribal districts of South Bihar in the year 2000. The formation of the state has been a result of a long-standing struggle and demand for a separate tribal state. As per the Census 2011, the Scheduled Tribes constitute 26.50 per cent of the total population of the State. Although not in a majority, a large number of tribal populations reside in the state. Some of the districts where there is a large tribal population are governed by special provisions incorporated in the Fifth Schedule of the Indian Constitution. Out of the total population of Jharkhand (Census 2011) around 75.95% live in the rural areas and around 24% reside in the urban areas. Since such a large population lives in rural areas, the main source of livelihood is agriculture. The adivasi community mostly depends on the forests and agriculture (mostly subsistence farming) for their livelihoods. According to the Indian Council of Agricultural Research (ICAR), the total cultivable area in Jharkhand is 22% and only about 9% land is irrigated. The

agriculture in Jharkhand mostly depends on rains and the rivulets which have been fast disappearing mostly due to mining and other developmental activities. The total forest area in Jharkhand is 29.61% as per India State of Forests Report 2011.

The above state profile suggests that Jharkhand's economy is mostly based on agriculture and therefore land becomes quite crucial for the people of Jharkhand. Being mineral rich the state has also attracted many corporate giants and mining companies that seek to initiate projects in the name of development. The tribal population have struggled to receive certain laws from the state to protect their customary traditions, livelihoods and their habitats. Tenancy laws are one of these laws that protect the adivasi lands from encroachment by state and therefore have constantly been under the threat of getting amended. The tribal population are nature worshippers and have a symbiotic relationship with environment. With their rich knowledge systems they have also been the main preservers of nature. However, the liberal state in the name of development and welfare, have been encroaching upon the areas inhabited by the tribes since ages, destroying their livelihoods and cultures, as well as destroying the nature. The tenancy acts which were formulated during the colonial times have in the present context proved to be a weapon against the land acquisition by the state and the corporate giants. The present paper examines the importance of these colonial acts for the tribes of Jharkhand, the paper therefore begins by tracing the history of the formulation of tenancy acts and how they reinforced the 'primitiveness' of the tribal communities followed by the major provisions of the Chotanagpur Tenancy Act 1908 and the Santhal Parganas Tenancy Act 1948. The paper concludes with an analysis of the importance of these colonial acts and why the adivasis now hold them as a weapon against the colonial tendencies of the post-colonial state.

Tenancy Laws in Jharkhand: Past and Present

In 1765, the East India Company received the *Diwani*¹ rights of the Bengal Subha (presidency) from the Mughal emperor and Permanent Settlement was introduced in 1793. As land revenue was

¹ The right to collect revenue.

the primary source of state income, the East India Company introduced the Zamindari System to collect land revenues in Bengal Presidency². The *zamindars* were made the permanent owners of the land subject to payment of a fixed annual revenue to the government. Most of the historical records suggest that the Adivasis were autonomous and self-governing before the advent of the British. Since the British came as traders, they viewed land and forests as mere sources of revenue. The land revenue became their major source of income. With the introduction of the Zamindari system, the common lands of the tribal villages also came under the control of the local zamindars. The village headman, who used to be first among the equals, now became the proprietor of all the lands falling within his Zamindari with almost absolute control over the land of his raiyats³. When a *zamindar* failed to pay his due revenue, his *zamindari* rights were auctioned in an open court to recover due land revenue. Many of the local *zamindars* failed to pay their due rent and their villages were auctioned in open court. Many times, land would be put to auction much before the local *zamindar* knew their villages were auctioned out to an outsider. Speculators and trading communities (mostly people from outside Chotanagpur). Rich landlords and moneylenders bought several such *zamindaris* and became landlords of villages whose customs and systems they hardly knew. They were also very strict in the collection of revenue, which resulted in many local people losing claim over their ancestral land, which they owned and cultivated for generations.

Major tribal revolts such as the Kol Rebellion of 1832, Birsa Ulgulan of 1899, Santhal Rebellion of 1856, etc., were a result of these land governance policies of the East India Company. These revolts highlighted the exploitation faced by the tribals in the hands of landlords and moneylenders, *diku* cohorts of the British Raj. Although the rebellions were easily crushed by the British, they did make an impact and pressured the colonizers to rethink their policies

²The present state of Jharkhand was part of the Bengal Presidency before Independence.

³Raiyat is individual cultivator, defined under Section 6 of the Act as a person who has acquired a right to hold and cultivate land including his successor

as it might impact the trade. Certain new legislations were enacted to remove these areas from the operation of general laws and regulations. The areas inhabited by the tribes were separated from the general regulations of British India through the Scheduled Districts Act of 1874 following the Criminal Tribes Act 1871 which emphasized on civilising the savage. The later regulations built upon the arguments of protecting and improving the tribal communities and allowing them “some autonomy in the system of resource control and decision-making, conditional on regular revenue payments” (Rao 2003: 4081). The Santhal Pargana Tenancy Act 1876 and the Chotanagpur Tenancy Act (CNT) 1908 were therefore enacted to protect the adivasi lands by preventing transfer of land to non-adivasis. As per the tribal custom, lands were supposed to belong to the original clearers of lands. Although at the time of the enactment of these laws, very few *khuntkatti* lands remained. The British conducted the survey, and the land records were prepared, but it was not a regular phenomena. The record of rights prepared in the pre-independence era are still the authentic record of rights for most of the districts in Jharkhand because fresh revisional surveys of land records have not been completed except in some districts like Lohardaga and Latehar in 1990 and "in Singhbhum between 1958 and 1965" (Upadhyay, 2005). The land record surveys were never completed in Jharkhand both during the colonial rule and the post colonial era. The people of Jharkhand still follow the *Khatian of 1932*. These laws and regulations aimed to serve two purposes. One, they can be seen as an attempt to appease the adivasis to avoid any further incidents of rebellion and continue to earn revenue from the lands and forest inhabited by them. Two, the purpose of these laws was “to civilize savages” (Chandra, 2013) allowing them to continue with their customary practices. The tribes therefore categorized as primitives, had to be looked after and protected by the colonizers.

After independence, the Bihar Land Reforms Act of 1950 abolished all intermediary tenure holdings, but the Mundari Khuntkattidari and the Bhuinhari lands were exceptions. They were protected under the CNT Act 1908 and the SPT (Supplementary Provisions) Act 1949. The tribal districts of then Bihar came under the provisions of the Fifth Schedule of the Indian constitution after independence and remained directly under the state control with

major discretionary powers entrusted with the Governor. Since the area of Jharkhand has always been a mineral rich area it has always attracted corporates and mining companies to establish mining projects and other infrastructural projects in Jharkhand. The only roadblock to these projects have been these land laws that prevent sale and purchase of lands in these areas. The subsequent governments therefore have tried to amend the major provisions of these acts to allow what they call 'development.'

The provisions of the Santhal Pargana Tenancy Act applies to the districts of Santhal Parganas viz., Sahebganj, Pakur, Dumka, Jamtara, Deoghar and Godda. The SPT (Supplementary Provisions) Act 1949 consists of total 72 sections out of which Sections 13, 20 and 42 showcase the basic spirit of the law. Section 13 enumerates the rights of the raiyat in respect of use of land and provides that a raiyat may use the land of his holding in any manner of local usage and custom or irrespective of any local usage and custom, in any manner which does not materially impair the value of land or render it unfit for cultivation (Raza 2015: 82). Section 20 prohibits the transfer, settlement or lease in any manner unless the right to transfer is recorded in the record of rights, in respect of any raiyati holding. Section 20 (3), (4), (5) clearly contemplates that in the absence of any documentary evidence produced, the possession cannot be legal. Section 42 of the Act permits eviction and restoration of possession of encroached agricultural land. The Deputy Commissioner (Collector of the district) may at any time either at his own motion or on application made to him pass an order for eviction of any person who has encroached upon, reclaimed, acquired or came into possession of agriculture land by a summery proceeding (Rathakrishnan and Kumar, 2013). Under this Act, hereditary village headmen (Pradhan/Mulraiyat) were appointed in all villages, even in non-tribal villages. They were brought under the Pradhani/Mulraiyat intermediary land revenue system. Therefore, the concept of ownership of land does not exist in this division, raiyat having only occupancy rights with the right of inheritance. The power under this section is not administrative but statutory and has to be exercised according to the right of the parties (Raza 2015: 83).

Under the SPT Act transfer of land is only permissible only when it is so recorded in the record of rights. Section 20 of SPT Act is the most misused provision. Land transfers are strictly prohibited as per the SPT Act but Section 23 allows for the exchange of raiyati land between two *jamabandi raiyats*⁴ for their mutual convenience. This section has been misused in consonance with the Section 20 (v) to secure land titles by non-*jamabandi raiyats*, especially in semi-urban and peri-urban areas. Section 20 (v) confers powers to the Deputy Commissioner to evict the transferee of the raiyati land transferred through fraudulent methods and restore the land to the transferor (member of the Scheduled Tribe) or his heir. If the transferor or his heir is not willing for the restoration of land, the Deputy Commissioner has the power to resettle the land with another raiyat belonging only to the Scheduled Tribe. Since land transfers are strictly prohibited, 'danpatras' (gift-deeds) are one of the common methods to obtain land in Santhal Parganas. Deeds are made in favour of the transferee that claims to donate some land to a needy and poor relative, to circumvent the provisions of the Act (Rao 2003: 4082). The dan patras are not legal deeds, and these lands involve the risk of being reclaimed by the owner at any time. The buyers, often citing this reason, offer lower prices to the owner and, after construction, sell the houses at a profit (ibid). A similar practice is prevalent in the Chotanagpur area as well. The CNT Act 1908 applies to the districts of the Chotanagpur area in Jharkhand. The time of enactment of this Act also becomes very crucial in the context of the seriousness of the British empire towards the Adivasis and their lands. The Act was in its final shape much before it was actually enacted. According to the senior journalist Faisal Anurag the Act was ready to be implemented in 1904 but because "the Tata's steel plant was in pipeline therefore it would have been very difficult for the Tata to acquire land for the plant as the CNT Act 1908 prohibits sale and transfer of Adivasis' land to non- Adivasis" (Dungdung 2013: 213). Tata Steel was established in 1907 and the law was enacted in 1908. The CNT Act specifically protects the rights of the *Mundari Khuntkattidari* (a special kind of tenancy that recognises the traditional ownership of the original clearer of the forest) over forests. It excludes such forests from the jurisdiction of Indian Forest

⁴ Cultivators listed in the record of rights.

Act 1928. The actual management of land is conducted at the district level by the Deputy Commissioners as the Chief Administrators under CNT and SPT Act. Sections 8, 10, 18 of Chotanagpur Tenancy Act recognises *Bhuinhar* and *Mundari Khuntkattidars*, which have not been vested in the state government. As per the tribal custom, these lands are supposed to belong to the persons who originally cleared the land. The members of the village families are considered as direct descendants of the original founder of the village so these lands have now come to be recorded in the name of the whole community. In the broken Khuntkatti⁵ villages of original clearers of forests are recorded as *Bhuinhars*.

Out of the total 217 sections in the CNT Act 1908, Sections 21, 46 and 71 showcase the basic spirit of the law. Section 21 provides for the rights of occupancy raiyat with respect to the use of land. When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which is authorised by local custom or usage or in a manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. Section 46 restricts the transfer of the land belonging to the Scheduled Tribes/ Scheduled castes or Backward Classes of that area. It allows sale and transfer of ST lands to STs, SC lands to SCs and OBC lands to OBCs. Section 71 allows the return of the illegally occupied tribal land to its rightful owner.

Claiming land-rights in Jharkhand

Jharkhand being a resource rich area the post colonial state too tried to exploit the resources for the so called development of the state and the economy. Huge industrial, infrastructural and mining projects have been established since. Following the colonial masters, colonial acts such as the Land Acquisition Act 1894 and India Forest Act 1928 continued even after independence. In the name of 'eminent domain' the government was authorised to take away lands for public purpose. Therefore the SPT Act and the CNT Acts proved to be a major safeguard against the encroachment by the huge corporate giants and mining companies, later amended to allow state to

⁵ Broken Khuntkatti means where the collective landholding system was broken.

acquire land for public purpose. The 1996 amendment to the CNT Act allowed land acquisition and transfer of lands in Scheduled Areas for industrial development and mining.

Land and forests have been the mainstay of Adivasi life. They have been a source of revenue and economic development for the colonial as well as post colonial governments. When adivasis resisted against the exploitation and land alienated by the colonial government, they received the CNT and the SPT Act. The nature of these Acts was such that they served as a blow to the cultural practices of community ownership. The lands now came to be recorded in individual names as against the customary practice of common ownership. Instead of resisting this Adivasi communities accepted the new colonial 'legal' identity to preserve their land rights. Sanjukta Das Gupta (2016) calls it 'another form of resistance' where in order to file for their *khuntkatti* status, the ordinary tribals preferred to function individually rather than as a community. Following the above argument, accepting the CNT and the SPT Act was a departure from the living customs of the community but by accepting these colonial categories the tribals "appropriated them to their own advantage to preserve their self-interest in the new set-up of land rights" (Das Gupta, 2016: 43).

Since the tenancy acts prohibited the sale and transfers of lands, these areas also came to be neglected by the colonial administration. The government earned revenue from these areas but benefits with regard to the agricultural practices and livelihoods remained neglected and with instituting of private property in land, it dismantled the traditional systems (Hill 2014: 44). Accepting the tenancy laws have come at the cost of losing the customary practices by the tribal people but now it is extremely crucial for them to safeguard their land rights that these acts provide and therefore, they have resisted against any kind of amendments by the state. Following the colonial masters, the post-independence states have tried to earn from the tribal areas without providing any benefits to the people. The communities have suffered displacement and impoverishment due to the developmental projects setup in these regions and the agricultural practices remain neglected and under-developed. Majority of the cultivation remains rainfed and in the areas where there are canals, water has not been released in them.

There have been very limited efforts by the governments to develop facilities such as small-scale irrigation systems or the pre-existing systems. Majority of the tribal people living in the rural areas are therefore forced to abandon their villages and lands and migrate to the nearby towns as labourers. The agrarian crisis therefore has also resulted in high rate of migration. Ecological degradation has increased the plight of the tribal population.

Note: The words ‘Adivasi’ and ‘Tribe’ are used interchangeably in text for the convenience of the reader. The words ‘Adivasi’ is used by the community for self-representation and ‘tribe’ is an administrative term used by the Indian law and administration.

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