

**REPORT OF THE STUDY GROUP
ON LAND HOLDING SYSTEMS
IN TRIBAL AREAS ***

PROF. B.K. ROY BURMAN COMMITTEE - 1990

**** Tribal Commissions and Committees in India.
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The Chairman of the Committee remarked as follows – “An Alienation of tribal land system through state action is becoming a very important fact of life and is the cause of much resentment in tribal areas. I would have been happy if it was otherwise.”

Here I would like to make it clear that mere change in land-use pattern, whatever may be the scale of such change, is not alienation. Even transfer of rights by itself is not alienation. It is related to role dissonance in economic, socio-political and cultural milieu.

Broadly, there are three processes through which alienation of tribal land holding system takes place, out of which one is related to the colonial past of the country and the other two to the dominant social philosophy about the role of welfare state and of the generative source of science and technology. I am leaving out here transfer of land from tribal individuals to non-tribal individuals, as in recent years there has been a sharp decline in its magnitude in many states and also it is to be perceived as the outcome of several processes, which deserve a closer look.

As a legacy of the colonial past, there is considerable ambivalence and ambiguity in the matter of recognition of customary rights of tribal communities in respect of land and land-based resources. Traditionally, in most tribal areas, individual rights of enjoyment of land and land-based resources are embedded in communal systems of access to and management of resources. While in the middle ages in some of the tribal areas feudal control was imposed on communal system, during the latter part of the colonial rule attempts were made to convert the political rights of military overlords into proprietary right of feudal nature. But due to the lack of administrative and productive infrastructure, such attempts mostly remained on paper. In the post-independence period, rather than correcting these attempts towards feudal distortion, these were accepted as the crucial elements of the legal framework for implementation of policies and programmes in the tribal areas. Paper laws of the colonial dispensation were given the place of pride over the laws on the ground, by which the people lived, and by and large still live their life. The significance of the tribal upsurges in diverse forms, which have taken place from

time to time during the last one century, for protection of their resource-based survival system, not only as biological entities, but also as social entities in specific historico-ecological niche, has not been adequately appreciated. On the other hand, the paper laws of the past have been used as an alibi to deny the customary rights of the people and in the process accommodative compromises have been made with the feudal pretensions in some areas and factional elites have been promoted in other areas. It is anybody's guess to what extent both have contributed to the stagnation of growth and corruption of the overall administrative political system.

Several qualitative and quantitative indicators can be given for the dispossession of the tribals that have taken place as a result of state policy regarding recognition of their customary rights. It has been found that only a fraction of the lands under possession of the tribals for generations have been recorded in their favour. It has also been found that they have been treated as encroachers, not only in respect of lands on which trees have grown in nature, but also in respect of lands on which trees worth several million rupees were planted by themselves and their forefathers. What makes the matter highly questionable is the use of the scientific method of land survey and concern for the protection of environment as the justification for these anomalies. This leads to the second process, through which the tribal land-holding system is being adversely affected.

There are arguments advanced by well-meaning persons that one should not be too much bogged down with historico-normative issues; what is more important is the welfare of the people. From this point of view, the tribal people are considered as backward and can be manipulated by internal and external vested interests against the mainstream strategy and programme of national development, and hence direct take-over of the resources under the aegis of the technical and administrative bureaucracy is in the long run in the interest of the tribals themselves. This argument is faulty on three grounds.

- First, it ignores the creative strivings of the tribal and other sections of the population at the grass-root level to harness the forces of nature, create their own environment and adapt themselves to the same.

- Second, it ignores the fact that bulk of the natural resources like minerals, timber, and hydel-power sources are located in tribal areas, and that tribal expectations and aspirations are as much important as those of any other section of population in determining the mainstream strategy and programme of development.
- Third, experience all over the world shows that there is a limit to the positive role of welfare state in human welfare. In fact, the welfare states have entered a grey area of uncertainties and crisis everywhere, and there is a growing quest for finding solutions to the environmental issues through people's creative partnership. But any land management system, which ignores the historical-ethical basis of people's rights and the process of democratic mobilisation taking place among them, will accentuate the environmental hazards.

The third factor affecting the tribal land holding system is the prevailing notion about the generative source of science and technology. For more than a century, an artificial separation has been created between life and laboratory as the generative source of science and technology. While technology has its own realm of autonomy, an integration of science and technology can take place only in real life situations.

As tribal life situation today mainly centres round the productive functions and relations of production-concerned land, the science and technological development in the tribal areas has to proceed along two axes.

- One axis is the skill, knowledge and resource base of the tribal communities.
- The other axis is the common pool of technology, and knowledge about the axis is the common pool of technology available to mankind at the global plane for augmenting the quality of life and strengthening the forces of peace and human unity.

It has often been found that in the matter of technological development of tribal areas, the tribal people, as such, have been generally looked upon as marginal concerns. As a result, technologies are transplanted which make their skill, knowledge and adaptive mechanisms irrelevant. Lands, which have been considered by them for generations as of vital importance for survival, are marked in terms of exogenous technology as wastelands. Some of the recent legislations and administrative measures in respect of wastelands have tended to adversely affect tribal interest; it is not a reflection against the subjective attitude of the policy makers, but it speaks about the failure of the social analysis to critically bring out the issues.

In the light of the knowledge derived from the intensive study that has been carried out in Orissa, there was a general feeling among the members of the Study Group that land reform policy in the tribal areas is yet to be realistically formulated. The cornerstone of land reforms in India has appropriately been the abolition of exploitative intermediaries between the state and the land users. But where individual rights are embedded in communal rights, removal of the community as intermediary removes the necessary condition for the concerned individuals to enjoy their rights. There are, however, several complex issues involved in this generalised statement; in-depth examination of the issues in the light of the actual processes taking place on the ground will be necessary.

Formation of the Study Group

A Study Group was set up by the Planning Commission (Backward Classes Division) on Land Holding Systems in Tribal Areas on November 6, 1985 vide their Memorandum No. Pc/Bc/17-1(21)/85. The Group consisted of the following members:

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Prof. G. Parthasarathy Prof. of Economics Andhra Pradesh University Visakhapatnam, A.P.	
Prof. Gangumei Kabui Prof. of History	

Manipur University, Imphal	
Prof. Jagannath Pathy Department of Sociology South Gujarat University Surat	
Justice D.M. Sen (Retd.) Gauhati High Court	
Shri Murkoth Ramunni (Retd.) Adviser to the Governor of Nagaland.	
Smt. A.R. Bandopadhyaya Commissioner - Agriculture and Irrigation Government of Bihar, Patna	
Dr. Bhupinder Singh Adviser - Planning Commission	Member-Secretary

Terms of Reference

The terms of reference were as follows:

To consider-

- (i) the nature and extent of land and land-based resources available in the tribal areas;
- (ii) the extent of land-holding patterns obtaining among different Scheduled Tribe communities and the types of institutions as well as forms of institutional arrangements prevalent among them for regulation of the use of the land resources by individuals, LAMPS, village communities on the land resources;
- (iii) the nature and extent of dependence of tribal communities on the land resources;
- (iv) the extent and form of awareness of the individual tribal communities relative to the economic value of the land resources;
- (v) the extent to which traditional access of the tribal communities to land and land-based resources is recognised under provisions of the various laws;
- (vi) the overt and covert changes following implementation of survey and settlement operations in tribal areas; and
- (vii) the changes in the matter of control and access to land and land-based resources in the wake of development activities and different administrative and legislative measures.

The present report is primarily based on the study in Orissa. But even this limited study has brought out certain issues of general nature which may have relevance to other states.

In the discussions and debates that preceded the preparation of the Seventh Five Year Plan, the fact that property relations based on land would be central to the future strategy of tribal development and to the integration of the tribal communities in the national polity was highlighted by the analysts of the tribal scene in various forums. It was argued that through the implementation of the six five year plans, the tribals by and large, had reached the take-off point from relief and welfare dimension to development dimension and that this point of consolidation of their traditional rights in respect of the resources was a matter of crucial importance for ensuring their enthusiastic participation in the development process.

Before going further into the issues relating to land holding pattern of tribal households, it is necessary to keep in view one contextual fact. A recent study shows that in the tribal areas of Orissa, 20.0 to 59.2 per cent of the population are engaged in the collection of minor forest produce - as one of the important sources of livelihood. Hence, information on individual land holding pattern of the tribal households is not an adequate indicator of the extent of their access to land-based resources. Any land administration or land reform policy which overlooks this fact, would be construed as a policy of curtailment of the traditional right of the tribals.

One dimension of persistence and change in the management and utilisation of land-based resources is formalised through the legislation enacted by the state in those fields. Another dimension is expressed in the regulatory processes by which the people live with or without the intervention of the state. Analytical appraisal of the first draws upon the insights of anthropology of legal positivism along with those of other disciplines. Enquiry into the second requires an empathetic appreciation of the universality of legal pluralism. Attempt to reach both will be made here as indicative of the line of approach.

Legal Frame and Administrative Action Pertaining to Land Control and Management

The post-independence moves and counter-moves at the legal and administrative levels for bringing in changes in land control system have been discussed in some detail, as they provide an idea of the limitations of such actions as mere official programmes without strong political mobilisation of the concerned population. The compromises that the bureaucracy and feudal or feudalistic interests make, mutually push the people's disappointment underground, only to come out in an explosive form. Some of the political upheavals that have taken place in the tribal areas from time to time during the late sixties and seventies are perhaps to be seen in this context.

Along with crystallisation of bureaucratic management system, tenancy reforms in post-independence period in Orissa have moved towards making land a marketable commodity.

It is noteworthy that traditional institutions of the tribal communities having interest in land do not appear to have been included in any of the land holding categories, viz., tenant, *ryot* or privileged *ryots*. A statute on land reforms is expected to give the same respect to the social and cultural moorings of the tribals as those of the non-tribals.

It is, however, to be recognised that if there were acts of omission in the recognition of the customary system of access to land resources, serious attempts have been made by the government to prevent the alienation of such lands of the tribals, which are *de jure* recognised by the state to belong to them.

Statutory Provisions on Prevention of Alienation of Lands from Tribals to Non-Tribals

The Orissa Land Reforms Act, 1960 itself contains important provisions for prevention of alienation of tribal land.

There is a separate statute to ensure effective protection to the Scheduled Tribes of the Scheduled Areas in the enjoyment of their land and immovable property. The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 2 of 1956 was passed for this purpose. The Regulation provides that transfer of immovable property by a member of the Scheduled Tribe shall be absolutely null and void unless made in favour of another member of Scheduled Tribes or with the previous consent in writing of the Collector or any other competent authority.

Till the end of February 1986, 28,219 persons were benefited by the provisions of the Act; altogether 38,914.97 acres of land were ordered to be restored and 34,212.98 acres were actually restored under the Orissa Scheduled Areas Transfer of Immovable Property Act, 1956. Similarly, 6,708.540 acres were restored to 4,440 Scheduled Tribe persons under Section 23 and 23-A of Orissa Land Reforms Act of 1960.

The number of beneficiaries itself is an indication of the large-scale transfer of immovable property that is going on.

On examination of the survey and settlement report and other materials available to the Study Group, a few extremely important facts came out. Apart from the constraint of technical nature imposed by the method of survey in the matter of correct measure of the land, there was a policy decision of the Government, as a result of which the preparation of record of rights turned into denial of the rights which were enjoyed by the concerned population for generations. According to the Survey and Settlement of Shri Behuria, the Orissa Government had decided in the context of prevalence of shifting cultivation, that cultivation on hill slopes upto 1 in 10 gradient on every hill would be recognised and that cultivation further up would be treated as encroachment, liable to be evicted in due course. Here two issues are involved. One is the right of the state to disallow continuation of shifting cultivation on steep slope; the other is the right to treat persons carrying on such cultivation as encroachers and to evict them in due course. As regards the right to disallow continuation of shifting cultivation, certainly there will be a general

agreement that the state has every right to stop it. It is a different matter when and in what manner the right should be exercised. But it does not follow from this that the shifting cultivators who are in the area for generations are encroachers and that the state has the right to evict them.

It was brought to the notice of the Study Group that in Kashipur area, *Kudki pattas* were issued by the Raja to the shifting cultivators. Even now, these *pattas* are recognised though they have been made non-heritable. In fact, the shifting cultivators and other cultivators beyond 1 in 10 gradient slope, who are mainly tribals, cannot be treated as encroachers and evicted without attracting the provisions of law. In this connection, the relevant sections of the Madras Estates Land Act, 1908 which operated in the area until recently, deserve careful examination. According to Ch.1 Section 15 of the Madras Estates Land Act, 1908 ‘*ryot*’ means a person who holds for the purpose of agriculture *ryoti* land in an estate on condition of paying the landholder the rent, which is legally due upon it. The crucial question here centres round the concept of agriculture. In Case No. II *Commissioner Vs. Ram Krishna Das* A 12, 1959 SC 239 it was observed that the term ‘agriculture’ in its ordinary sense means ‘cultivation of field and would connote such basic operations as tilling of land, sowing of seed, plantation and the like’. Shifting cultivation thus is ‘agriculture’ within the meaning of the term under Madras Estates Land Act, 1908. Two other questions are also relevant in this connection: whether the shifting cultivators have continuous occupation of the land, and whether they paid rent prior to the policy decision of the Government not to recognise them.

The question of continuous occupation can be examined at two levels: one at the level of the community; and the other at the level of individuals belonging to the community. It has already been indicated on the authority of Orissa Government Publications that both at the community and the individual levels the system of continuous occupation prevails among sections of the Kondh and Bhuiyas. Ramdhyan’s Report of the early ‘40s gives similar information for many other tribal communities of Orissa. The question of continuous occupation has assumed particular significance in view of another policy decision taken by the Orissa Government in 1972 to the effect that encroachments

committed by the tribals prior to 10th October 1969 in certain areas should be recorded as their *ryoti* land without taking any further proceedings.

Apart from its questionable legal validity, treating of the cultivators beyond 1 in 10 gradient slope is, thus, contradictory to an important policy decision of Government. As regards payment of rent, mention has been made earlier of collection of the same under *mustajari* system in Koraput district. After the *mustajari* system was abolished with effect from 1st July 1957, rent began to be collected directly from the tenant. Thus, the cultivators even beyond 1 in 10 gradient slope were on all counts *ryots* under the provisions of Madras Estates Land Act, 1908 and it is to be recalled that as early as 1824 Munro had observed that *ryot* is not a tenant - not 'removable'. It appears that while drawing up the guideline for survey and settlement operation, it is observed that the land control and management system actually prevailing on the ground and the historical roots of the same were not adequately kept in view. As a result, perfunctory entries were made in the record of rights. In some villages in Bondo Hills, less than 1 per cent of the total land under occupation of the tribals has been entered in the record of rights. In a good number of villages in more accessible parts of Koraput district, less than 10% of the land under occupation of the tribals for generations has been recorded in their favour.

By the system of survey and settlement operations, which was undertaken in Koraput district according to the guidelines provided by the Board of Revenue, the right of tribals not only in respect of their agricultural land beyond 1 in 10 gradient slope failed to be recorded, but also in some villages at least their right in respect of trees planted by them failed to be recorded. In one village of Bissamcuttack Block, while only 2.50 acres of land below 10 per cent slope (out of the total land of 936.13 acres in the village) was recorded in favour of the tribals, several thousand jackfruit trees (owned by individual households) and at least two-thousand mango trees (communally owned by Wadaka lineage group) located on higher slopes were found to be on lands which were recorded as state land. The market value of the existing stock of these trees was estimated to be around Rs. 40 lakhs. Incidentally, it is to be noted that this village is inhabited by a primitive tribe – the Dongria Kondhs, and that there are only 44 tribal households in the

village who are poor not because they lack in resources, but because of non-recognition of the resources by the state either for determination of ‘property rights’ or for formulating the development strategy.

On behalf of the Government of Orissa, one note on the problem of cadastral survey beyond 10 per cent slope was given to the Study Group. It specifically referred to the survey in Bonda Hill and *inter-alia* stated as follows. “The problem of survey above 10% slope would be more acute when the cadastral survey of Upper Bondo Hill is taken up. Except the system of plain-table, no other accurate method of survey is available with us for doing this work and in case of survey of the area above 10% slope, detailed survey by plain-table method will not be possible. During the detailed cadastral survey of a village, each individual holding to be surveyed including the home-stead lands, cultivated lands and other government lands in a particular scale of survey. As per the existing practice, in case a hill is situated inside a village limit, the cadastral details are surveyed upto a certain limit only - upto 9 (nine degree) slope and the rest extent are left unsurveyed. The higher portions are surveyed and shown as one plot only. So far no procedure has been laid down for survey of all details of the slopes of the hills in the plain-table method of cadastral survey.”

Two facts come out from this. First, it has not been possible to make accurate measure of tribal land in the upper reaches of hill tracts. Second, in the hill tracts complete cadastral survey is yet to be done. What has been done is cadastral survey of land upto a certain degree of slope. In the context of this fact, the legal status of the survey documents requires a closer look.

Recapitulation, Supplementary Observation and Recommendation

In the recent decades, cadastral surveys have been carried out in the hills by plain-table method, which enables such surveys to be done upto 10 per cent slope only. As a result, though it is claimed that except for very small areas survey and settlement operations have been completed throughout Orissa, actually in many parts of the state cadastral

surveys have been conducted upto 10 per cent slope only. *According to an official note submitted to the Study Group, all lands beyond 10 per cent slope have been shown in a single entry, because of the constraint imposed by the method of survey. In Keonjhar, it was found that even this 10 per cent slope was a theoretical proposition. As per guidelines evolved in 1974, for undertaking survey and settlement operations in Juangpirh, the upper reaches of the hills were to be earmarked for grazing purposes. While this had the effect of abrogation of community rights over varying extents of land on the hill slope in favour of the state, the line of demarcation between what might be called the 'upper reaches' and the 'lower reaches' tended to be determined subjectively. In some villages the slopes were entirely gentle and the drawal of lines between the upper and lower slopes was obviously arbitrary. The field situation was thus an eye-opener. Information available from the settlement report of Koraput also indicated that lands beyond 10 per cent slope were shown in the record of rights as pertaining to the state and the actual occupants of such lands were shown as 'encroachers'. The Study Group feels that the validity of the procedure in terms of the normative base of the laws of the country should be carefully examined.*

The data available from Koraput show that in some villages even 1 per cent of the land under actual occupation of the concerned tribal communities has not been recorded in their favour in the record of rights. In those villages almost entire lands have been recorded in favour of the state. It has been mentioned to the members of the Study Group by knowledgeable persons that many tribals look upon the survey and settlement operations as an operation of confiscation of their land rights. The Study Group cannot help feeling that there is something in the tribal perception of the situation which merits a thorough probe.

Further, from the official note furnished to the Study Group on behalf of the Government of Orissa, it appears that the disturbing situation found in Orissa is partly the outcome of a practice, which is not exclusive to Orissa alone. The Study Group strongly feels that a thorough study of the effect of the various techniques of survey on the land rights of the

tribals and other hill-dwelling communities should be carried out in all the hill areas of the country in consultation with the Surveyor General of India.

The second impediment in assessing the land-based resources is partly cultural and partly technological. The conventional practice is to consider those endowments of nature as resources which have known commodity value in agriculture, horticulture, forestry, animal husbandry, mining, etc. But in recent years there is a growing realisation that the endowments of nature like weeds and non-descript plants, which were so long considered waste and useless in terms of market economy, have great useful value for the tribal communities concerned. In fact, many of these constitute the core of the survival system, particularly of the more primitive tribal communities.

A comparison of the provisions in Orissa Survey and Settlement Act, 1958 and Chhota Nagpur Tenancy Act, 1908 shows that while some of the rights of communal nature are required to be entered in the record of rights in Chhota Nagpur, are not required to be entered in the corresponding documents in Orissa. The Study Group recommends that a comparative study of the provisions in the Survey and Settlement Acts or Manuals of the different states having tribal concentration about the nature of entries to be made in the record of rights should be made so as to ensure that the rights relevant for the tribals are appropriately recorded.

It is obvious that as a sequel to non-recognition of communal rights, the embedded rights of tribal individuals also fail to be recorded. In this connection the Study Group would like to draw pointed attention to the insightful observation of Justice Hidayatullah that historically speaking separation of individual from the community in matters of property relations concerning land is not a part of Indian tradition, it is a colonial handover. The far-reaching implication of this observation requires to be worked out in detail.

The Study Group has tried to understand the factors inhibiting the recognition of corporate rights of the tribal communities. It has come across the following four major arguments in favour of non-recognition of communal rights: (a) communal rights have

disintegrated and do not actually exist on ground, (b) communal rights provide cover for the influential sections of the community to usurp the rights, (c) communal rights are not compatible with market-oriented development process, (d) though communal rights as such are not recorded in the record of rights, these are often recorded as common facilities owned, controlled and managed by the State or other agencies on being assigned by the State.

The Study Group feels that rather than conjectural generalisation of the disintegration of the communal system, intensive studies of its persistence, charge, decay and reinvigoration (whatever may be the real fact) should be conducted in the relevant historical context.

The Study Group feels that comparative data from other parts of the world should also be taken into consideration in formulating policy decision regarding communal land system. As regards recording the common facilities as state property, the Study Group feels that this will weaken the process of participatory development and democratic decentralisation.

The Study Group feels that whatever facts on the ground so warrant, tribal community organisation should be recognised as a privileged *ryot* in the same manner as Lord Jagannath, or a plantation is regarded as a privileged *ryot*.

The right of preparing and approving the working plan vests with Forest Department's officials, it is difficult to envisage to what extent the needs of the village communities will be satisfied through such arrangement.

In the Public Demands Recovery law of Orissa, certain institutions like banks and co-operatives have been assigned the privileged position in the sense that they can take over the land assets of the tribals in case of default and sell them. The Study Group is of the view that while the institutions might continue to occupy the privileged position, operative norms should be laid down to ensure that the land is not sold to non-tribals and

that through the disposal of the land, community's access to and control and management of land resources of corporate nature is not adversely affected. The Group is, however, aware that for operationalising the suggestion, it will be necessary to spell out the specific steps in some detail. This can be done only after comparative data have been obtained for the different parts of the county.

The Study Group has also addressed itself to the problem of transfer of land by individual tribals to individual non-tribals, and feels that this is a symptom of imbalance among the different elements of planned development. The nature of imbalance may, however, vary from area to area, and tribe to tribe. While the Study Group recommends a comprehensive study of the imbalance covering diverse socio-ecological niche in all the tribal areas of the country, as an interim measure it suggests that the authority for grant of permission for transfer of land from an individual tribal to an individual non-tribal should be exercised by the Collector or Deputy Commissioner only, and it should not be delegated to a lower level. Besides watchdog committees consisting of tribal representatives, social workers and social analysts should be constituted at the district level to maintain vigilance over the broad trend of alienation of tribal land to both public and private agencies, as well as to individuals.

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