A Socio-Economic and Legal Study of Scheduled Tribes’ Land in Orissa

Supported by:
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Kundan Kumar
Pranab Ranjan Choudhary
Soumendra Sarangi
Pradeep Mishra
Sricharan Behera
Schedule V areas, Forests and Tribal communities in Orissa

[Map showing Schedule V areas in Orissa with various symbols and colors representing different land uses such as dense forest, open forest, mangrove, non-forest, water-bodies, and district boundaries.]

Legend:
- Green: Dense forest
- Yellow: Open forest
- Maroon: Mangrove
- White: Non-forest
- Light blue: Water-bodies
- Gray: District boundary
- Black: State boundary

Schedule V areas
Orissa’s Tribal Communities

- 62 tribes consist of 22.21% of the population of Orissa
- 13 Primitive tribal groups
- 44% of area declared as Schedule V areas
- Tribal communities range from hunter gatherers, shifting cultivators to settled peasantry
Poverty among STs of Orissa

- Orissa is the poorest State in the Country
- Poverty levels differ by social groups and regions
- 72% of the ST are under poverty line
- In South Orissa, 87% of ST are living under Poverty line

<table>
<thead>
<tr>
<th>Social group</th>
<th>ST</th>
<th>SC</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poverty Percentage</td>
<td>72%</td>
<td>55%</td>
<td>33%</td>
</tr>
</tbody>
</table>
## NSS Region-wise Trend in Poverty Ratio (Rural), 1983–84 to 1999–2000

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Coastal</td>
<td>57.90</td>
<td>48.40</td>
<td>45.30</td>
<td>31.80</td>
</tr>
<tr>
<td>Southern</td>
<td>80.80</td>
<td>83.00</td>
<td>68.80</td>
<td>87.20</td>
</tr>
<tr>
<td>Northern</td>
<td>75.20</td>
<td>61.00</td>
<td>45.80</td>
<td>49.80</td>
</tr>
<tr>
<td>Orissa</td>
<td>65.29</td>
<td>55.58</td>
<td>48.56</td>
<td>48.01</td>
</tr>
</tbody>
</table>

Of the three components of HDI, the education index has the highest weight (0.723) whereas the health index has the lowest weight (0.468) and the income index (0.545) lies in between.
• Scheduled tribes are the most marginalised sections of Orissa
• Tribal districts tend to have the highest poverty and lowest HDI
• North Orissa tribal districts have relatively better indicators than South Orissa District
• In South Orissa, poverty has increased over the last two decades
• Is there a link between access to Land and other natural resources and poverty levels?
Land ownership patterns in Tribal dominated districts
State owns 74%

SF & MF 13%

Others 13%

NF State land 28%

Pvt Land 26%

State Forest Land 46%

SC & ST constitute 66% of Population in these districts!

State holds 3/4th of land
20% HH are landless
And another 65% HH own only 13% land
Landownership pattern in Scheduled Districts of Orissa

<table>
<thead>
<tr>
<th>District</th>
<th>Private Land</th>
<th>Non-Forest State Land</th>
<th>Forest Land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gajapati V</td>
<td>14%</td>
<td>21%</td>
<td>64%</td>
</tr>
<tr>
<td>Keonjhar V</td>
<td>28%</td>
<td>35%</td>
<td>37%</td>
</tr>
<tr>
<td>Kondhmal V</td>
<td>14%</td>
<td>11%</td>
<td>75%</td>
</tr>
<tr>
<td>Koraput V</td>
<td>29%</td>
<td>47%</td>
<td>24%</td>
</tr>
<tr>
<td>Malkangiri V</td>
<td>19%</td>
<td>27%</td>
<td>54%</td>
</tr>
<tr>
<td>Mayurbhanj V</td>
<td>37%</td>
<td>21%</td>
<td>42%</td>
</tr>
<tr>
<td>Nowrangpur V</td>
<td>30%</td>
<td>23%</td>
<td>47%</td>
</tr>
<tr>
<td>Rayagada V</td>
<td>20%</td>
<td>43%</td>
<td>37%</td>
</tr>
<tr>
<td>Sundergarh V</td>
<td>28%</td>
<td>21%</td>
<td>51%</td>
</tr>
</tbody>
</table>

Graph I: Ownership of Land In scheduled Districts of Orissa

93% of hhs in Gajapati are either landless, marginal or small farmers
Kondhamal: Marginalized!

- State holds more than 4/5th land
- 26% HH are landless
- Another 41% HH own only 7% land

**Pie Charts:**
- **Forest land**: 75%
- **Pvt land**: 14%
- **NF State land**: 11%
- **State land**: 86%
- **SF & MF**: 7%
- **Other**: 7%
State land and landownership patterns in tribal districts or Orissa

Percentage

% of landless, marginal and Small landholders

Landholding as percentage of district land area
Land ownership in project watersheds of Lanjigarh Block

- Pvt land: 10%
- Rev waste: 3%
- Forest: 45%
- Others: 42%
• In tribal districts, three-fourth of the land is owned by the State. The tribals have no or little rights on these land either individually or collectively
• Yet majority of the rural households in these districts tribal have extremely poor access to land.
• in tribal districts, approximately 20% of the rural households are landless, 41% are marginal farmers and 23% small farmers
• The average size of landholdings of STs across the State works out to 1.12 standard acres as against 1.43 standard acres for general castes.
• The average holding size for marginal ST landowners comes to only 0.44 std. acres
Dynamics of poor access and rights on land by scheduled Tribes
Typologies of processes which have constrained and reduced access to land for tribals

- Loss of land through private transactions
  - Land alienation through displacement
    - 1. Land mortgaging
    - 2. Sale of land after permission
    - 3. Illegal Sale of land
    - 4. Encroachments by non tribals
    - 5. Loss of land before S & S

- Loss of land through Survey and settlements
  - 1. Permanent Cultivation land categorized as government land
  - 2. Shifting cultivation land categorized as state owned land
  - 3. Unsurveyed areas

- Notification of forests
  - 1. Encroachments eligible for regularization but not regularized
  - 2. Forest Land where proper settlement has not taken place
  - 3. Poor settlement of rights during reservation
  - 4. Shifting cultivation areas categorized as forests

- Landlessness
  - 1. Loss of patta land through land acquisition
  - 2. Loss of government land cultivated by the displaced

- Poor distribution of Government wastelands
Patta land alienation

• Forms of loss of legally owned land
  ➢ **Land mortgaging**
  ➢ **Sale of land to non-tribals – with and without permission**
  ➢ **Land transferred before current protection laws were in place**

• Land Mortgaging
  ➢ 28% of HH is the sampled households had mortgaged approximately 40% of their landholdings
  ➢ Average loan amount was around Rs. 4000/- per household
  ➢ Most important reasons for credit were: marriages and death ceremonies, bullock purchase and health contingencies
  ➢ Laws regulating moneylending to tribals largely non-effective

• Sale of Land to non-tribal:
  ➢ Sale of tribal land to non-tribals completely prohibited in 2002
  ➢ Pre-2002, approximately 8550 acres of land sold to non-tribal after permission in Orissa
  ➢ In study villages, most sale of tribal land were to other tribal only
  ➢ More detailed study needed to understand extent of unofficial sale of land which seems to be concentrated in areas close to towns or in developed areas
• Land transferred before current protection laws were in place
  ➢ Tribal land protection laws were full of loopholes
  ➢ In the pre-independence period, Tenure intermediaries flouted the protective rules
  ➢ For instance, Koraput Survey and Settlement detected 604 cases of land alienation
<table>
<thead>
<tr>
<th>Areas</th>
<th>Categorie s</th>
<th>Rules Applicable for protection of tribal land</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayurbhanj</td>
<td>Ex-princely States (or parts therefore) included in Scheduled areas in 1956</td>
<td>Ex-state laws</td>
</tr>
<tr>
<td>Sundergarh</td>
<td>Ex-state laws</td>
<td>No restriction on transfer</td>
</tr>
<tr>
<td>Kuchinda Tahasil (Sambalpur district), Keonjhar, Telko, Champua and Barbil Tahasills (Keonjhar District), Thuamulrampur and Lanjigarh blocks (Kalahandi District), Nilgiri block (Balasore district), Kashipur Tahasil (Rayagada District)</td>
<td>Ex-princely States (or parts therefore) included in Scheduled areas in 1979</td>
<td>Ex-state laws</td>
</tr>
<tr>
<td>Tigiria, Athgarh, Baramba, Narsinghpur (undivided Cuttack district), Ranpur, Nayagarh, Khandapara, Daspalla (Nayagarh district), Boudh ex-princely state (Boudh district), Dhenkanal, Athamalik, Hindol, Talcher, Pallahara ex states (Undivided Dhenkanal district), Part of Kalahandi ex-state (Kalahandi district), part of Keonjhar ex-state</td>
<td>Ex-Princely states not under schedule V</td>
<td>Ex-state laws</td>
</tr>
</tbody>
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OSATIP = Orissa State Agricultural Tenancy Improvement Program
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Koraput, Malkangiri, Nowrangpur, Rayagada</strong> (excluding Kashipur tahasils)</td>
<td>Areas under Vizag agency tracts</td>
<td>No restrictions</td>
<td></td>
<td>The Agency Tracts Interest and Land Transfer Act, 1917 (ATILT, 1917)</td>
<td></td>
<td></td>
<td>OSATIP Regulations, 1956</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>districts, Agency portion of Ganjam (current R.Udaygiri tahasil, Gumma and Rayagada block of Gajapati district and Sorada</em></td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Undivided Balasore district (except Nilgiri block), Undivided Cuttack district</strong></td>
<td>Areas under direct British rule (non agency areas)</td>
<td>No Restrictions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Orissa Land Reforms Act, Section 22, 23 applicable</td>
</tr>
<tr>
<td>(excluding ex-princely areas), Undivided Puri <strong>Areas under direct British rule</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Khondmal Subdivision (Current Khondamal District)</strong></td>
<td>Areas under direct British rule</td>
<td>Angul Laws Regulation</td>
<td>Kondhmal Laws Regulation 1936.</td>
<td></td>
<td></td>
<td></td>
<td>OSATIP Regulations, 1956</td>
<td></td>
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<tr>
<td><strong>Angul Sub-division</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Orissa Land Reforms Act, Section 22, 23 applicable</td>
</tr>
<tr>
<td><strong>Khariar Ex-State (Nuapada district)</strong></td>
<td>Khariar ex-state</td>
<td>No restrictions</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Provisions of CP Tenancy Act</td>
</tr>
</tbody>
</table>

Adopted from Rout, 1998, Panigrahi, 2001
Improper recording of rights through Survey and Settlement

• Non-recording of shifting cultivation land and their conversion into Government Land
  – 30,000 sq. km. of shifting cultivation – Forest Enquiry Report, 1959
  – Communal tenure not accepted
• Unsurveyed areas and lack of settlement of rights therein
• Non-settlement of permanent cultivation eligible for settlement under OPLE, 1972 and OGLS, 1962
Terraced paddy lands along stream beds with short fallow cultivation on hill slopes, Dekapar Village, Koraput. All the cultivated land on the slopes is Government land. In this village, only 150 acres out of >1000 acres has been settled with tribals.
Shifting cultivation

- Estimated area affected by shifting cultivation in 1959: 30,000 sq. km (20% of the State’s area???)
- Most tribal communities highly dependent on shifting cultivation
- Delegitimised as a landuse and all shifting cultivation land taken over as government land, either as forests or revenue land
- Continuous conflicts and contestations
- Lack of secure tenure means that neither state nor tribals are able to regenerate or use this land productively, leading to ecological degradation
Shifting cultivation patches in Juangpirh of Keonhar district show as light green against Dark green of forest stands
Non-settlement of rights during revenue Survey and Settlements

- Large areas left out of survey and settlement processes
- In Koraput undivided district 8000 sq. km (forested areas, remote areas, hills) was left out of the first (and last) S & S. Also another 5000 sq. km. approx. of land above 10% slope was unsurveyed and categorised as government land. Thus no rights settlement was done in over approx. 13000 sq. km of land out of total of 25320 sq. km. of area.
- Even now, as per State record, 640752 acres of land are completely unsurveyed
- FD, during reservation, does not take cognisance of land not settled in name of cultivators by revenue department
Non-settlement of permanent cultivation eligible for settlement under OPLE, 1972 and OGLS, 1962

- OGLS Act, 1962, provides for the settlement of land with SC and STs to the extent of 70% of the state land eligible for settlement. OPLE Act, 1972 provided for regularisation of encroached land up to 1 standard acres with cultivators.
- State Government has distributed 377,000 acres of land to 224,000 scheduled tribe families since 1974 till date. However, around 90% of such distribution was made in 1970s.
- Since 1980, the rate of government land distribution to STs has come down to approximately 2000 acres per year.
- Example: In Dekapar, out of 107 HHs surveyed, 74 were either landless or marginal farmers. Only 13.52 acres of Government land has been settled with 24 families till date. These families cultivate 69 acres of Government land and have lost 86 acres of government land cultivated by them for Plantations.
- In Bangusahi, 54 HHs own 62.5 acres (equal to 15.5 standard acres) of land, whereas 85% of land belongs to Government. 75% of the Government land was customarily used for shifting cultivation. Much of this land has been planted with cashew by the villagers. However, only 11 families have been provided usufructory rights on 2.25 acres of cashew plantations each.
Paddy lands created by Kondh Tribals through stone bunding on steep hill slopes where perennial water source is available. The land belongs to the Government.
<table>
<thead>
<tr>
<th>Type of Forest</th>
<th>Area in sq. km.</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reserve Forests</td>
<td>26329</td>
<td>Under direct control of Forest Department. Declared as RF under Section 21 of Orissa Forest Act, 1972 or deemed as Reserve Forests under Section 20(A) of Indian Forest Act, 1927</td>
</tr>
<tr>
<td>Demarcated Protected Forest</td>
<td>11685</td>
<td>Land under control of Revenue Department. Declared as Forest under section 33 of OFA, 1972 or deemed as protected forests under Section 33(4) of OFA, 1972</td>
</tr>
<tr>
<td>Undemarcated Protected Forest</td>
<td>3838</td>
<td>Land under control of Revenue Department</td>
</tr>
<tr>
<td>Unclassed Forests</td>
<td>20.55</td>
<td></td>
</tr>
<tr>
<td>Other Forests</td>
<td>16261</td>
<td>Land under control of Revenue Department. Legal status is not clear.</td>
</tr>
<tr>
<td>Total Forest Area</td>
<td>58135</td>
<td></td>
</tr>
</tbody>
</table>
Land under forests: contested categories

• Prima facie, forest laws provide protection for settlement of rights of the local people and communities before declaration of forest land (sections 4-20 of the OFA for RFs and section 33 of the Orissa Forest Act, 1972)

• In Orissa, this assumption fails in large areas due to:

  ➢ Declaration of *deemed* Reserved Forests and Protected Forests
  ➢ Lack of settlement of rights and faulty settlement of rights during forest land creation
  ➢ Non-settlement of rights during revenue Survey and Settlements
## Forest areas in Orissa before and after independence (sq. km.)

<table>
<thead>
<tr>
<th>Category</th>
<th>1st April 1936</th>
<th>1st April 1948</th>
<th>1st April 1960</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reserved Forests</td>
<td>3629.59</td>
<td>3615.56</td>
<td>22457.76</td>
</tr>
<tr>
<td>Reserved Land</td>
<td>981.61</td>
<td>3286.71</td>
<td>5379.41</td>
</tr>
<tr>
<td>Private Reserved land</td>
<td></td>
<td>4279.98</td>
<td></td>
</tr>
<tr>
<td>DPF</td>
<td>528.36</td>
<td>541.31</td>
<td>537.84</td>
</tr>
<tr>
<td>UDPF</td>
<td></td>
<td>98.42</td>
<td>16752.94</td>
</tr>
<tr>
<td>Unclassed Forests</td>
<td>1.96</td>
<td>3.67</td>
<td>11.11</td>
</tr>
<tr>
<td>Ex-Zamindary Forests</td>
<td></td>
<td></td>
<td>20559.34</td>
</tr>
<tr>
<td>Lakraj Forests</td>
<td></td>
<td></td>
<td>135.15</td>
</tr>
<tr>
<td>Debottar Forests</td>
<td></td>
<td></td>
<td>52.58</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>5141.52</strong></td>
<td><strong>11825.65</strong></td>
<td><strong>65886.13</strong></td>
</tr>
</tbody>
</table>
• Most of these forests deemed to be RFs and PFs were not created through proper right settlement processes
• They often used to have tribal settlements inside them
• Large areas of such deemed forests were under practice of shifting cultivation in tribal areas
• Thus in 1970s, a large area of forest land was under cultivation, including shifting and permanent cultivation
• In 1972, a circular was passed to recognise these land rights, was never implemented, and then FCA, 1980 came into picture
• Since 1980, only 29 ha. of such land have been settled with cultivators
• This doesn’t even consider the huge forest areas under shifting cultivation, as it is not regularisable as an illegitimate landuse.
### Displacement through Irrigation, mining, industrial and conservation projects in tribal areas

<table>
<thead>
<tr>
<th>Serial No</th>
<th>Projects</th>
<th>Area acquired or affected (ha.)</th>
<th>No of villages affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Irrigation- Dam projects (Major) Completed.</td>
<td>200423</td>
<td>900</td>
</tr>
<tr>
<td>2</td>
<td>Irrigation – Dam projects (Medium) Completed</td>
<td>14403</td>
<td>118</td>
</tr>
<tr>
<td>3</td>
<td>Irrigation – Dam projects (Medium) Ongoing</td>
<td>12160</td>
<td>92</td>
</tr>
<tr>
<td>4</td>
<td>Irrigation – Dam Projects (Major) Proposed</td>
<td>30233</td>
<td>113</td>
</tr>
<tr>
<td>6</td>
<td>Industries (All Types of Industries)</td>
<td>45358</td>
<td>176</td>
</tr>
<tr>
<td>7</td>
<td>Mines (All types of mine leases given out)</td>
<td>101947</td>
<td>NA</td>
</tr>
<tr>
<td>8</td>
<td>Wild life Sanctuaries and National Parks</td>
<td>811155</td>
<td>771</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1215679</strong></td>
<td><strong>2170</strong></td>
</tr>
</tbody>
</table>
• No clear data about displacement of tribals
• One estimate is that 1.5 million people, of which 42% are tribal
• Undivided Koraput district has lost 7.42% of its land area
• No land as compensation in general- turning STs into landless- violation of OSATIP regulation of 1956
• No recognition of non-patta land use
• No recognition of livelihoods dependence landscape
• Displacement pace is increasing- major flash points
• Multiple displacements as in Badagada, Sambalpur
• Plantations under Government programs have become an important displacement agent- new threats from bio-diesel and carbon trading
Satellite picture (picture covers approximately 1000 sq. km. area) of mining in Schedule V areas of Keonjhar district. Part of these areas is the homelands of Paudi Bhuiyans and Juangs (Primitive tribal groups)
Displacement by Dams

Four major reservoirs in the tribal Koraput District (undivided). Together they submerge over 528 sq. km. of the valley bottom land. Another 71 sq. km. of this schedule V area has been acquired for HAL and NALCO.
Summing up

- Complex matrices of policies, laws and contexts frame tribal access to land
- Flaws in S&S, Forest notifications and revenue administration - non recognition of customary systems
- Criminilisation of customary land and resource use
- A normality of extortion and exploitation
- Internal colonialism???
Some suggestions

A re-territorialisation in tribal areas
• Complete survey and settlement
Principles
• Adoption of community rights and governance on land within customary boundaries (Bhuria and PESA)
• Acceptance of right over shifting cultivation land
• Adoption of Samata Judgement
• Adoption of minimum landownership principle
• Ceiling surplus and bhoodan land
• Exclusive PTG homelands
• Effective land administration and land reforms as a core development strategy