

Alienation and Restoration of Tribal Land in Jharkhand

Current Issues and Possible Strategies

This paper examines the ongoing processes that lead to the alienation of adivasi land in Jharkhand, the legal provisions meant to address this problem, and the problems with the working of the law in practice.

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The alienation and restoration of adivasi land and land rights has been one of the most complex and sensitive issues in Jharkhand. Over the years, the adivasis have witnessed continued dispossession of both individual and community control over their resources. The continued alienation has not only intensified their poverty, but also seriously threatened their identity in their own homeland. The history of earlier phases is obscure but it seems that various tribal groups cleared the forest, made their habitation and developed a system of land rights and inheritance, a system of village governance and inter-village organisation. Each phase of history has brought new challenges before the communities. The alienation began during the medieval period, but intensified at an unprecedented pace in the colonial period. The communities not only lost their rights on forest, but a new set of intermediaries were imposed on the tribal areas. This led to widespread protests which caused the colonial authorities to pass a legislation which recognised the rights of the adivasis through survey and settlement operations. However, these laws also legitimised the rights of the landlords.

There has been hardly any respite in post-independence India. The area being rich in natural resources has attracted considerable investments in mines, industries, hydel projects, irrigation and reservoirs of different sizes. A number of educational and research institutions have also been established here. All these have led to both direct and indirect eviction of adivasi communities. The investment has created "enclaves" having very low linkages with the hinterland. Improper and callous rehabilitation has accentuated the problem in the post-independence era. The continuous immigration of outsiders has also led to a fresh demand for land. Migration due to urbanisation and industrialisation on the one hand and rural stagnation on the other hand, has put further pressure on the assets of the tribes in the periphery.

The history of the implementation of the laws protecting adivasis has been replete with violations. Every amendment to prevent alienation has resulted in new loopholes. New modes and methods have been adopted for the alienation of land. The rise of a new tribal elite has also increased the alienation of resources both in the urban and rural areas.

Legal Provisions

The Chotanagpur Tenancy Act 1908 (CNTA), the Santal Pargana Tenancy Act 1949 (SPTA), the Land Acquisition Act 1894 (LAA), the Scheduled Area Regulation 1969 (SAR), the Coal

Bearing Areas Act 1957 and the SC and ST Prevention of Atrocities Act 1989, are some of the laws which govern land rights, regulate acquisition for public purpose and give adivasis an executive protection from individual resource alienation. These laws, albeit to a limited extent, also guarantee the customary rights of the community, define various categories of 'rai-yats' and recognise special categories of tenures ('mundari khuntkatti' and 'bhuinhari'), protect the rights of 'rai-yats' against high rents/enhancements of rents, protect against transfer of raiyati land, regulate the conditions of transfer and make provision for the restoration of illegally alienated land. The SPTA is in many respects similar to the CNTA, but goes a step forward in recognising the customary rights and community life, particularly in relation to the settlement of land and the protection of the rights of paharias. The SPTA prohibits transfers of all lands (including that of non-adivasis) and allows transfer only in a few categories [see Rao, this issue] while CNTA permits the sale of non-adivasi land, and of adivasi lands to other adivasis within the same police station and with the permission of the deputy commissioner. The SC land can be sold to other SCs within the same district. The CNTA also permits the alienation of land for specific purposes like mining. The SC and ST Prevention of Atrocities Act has a provision for action against encroachment of land.

One of the most important steps in the direction for restoration of illegally alienated land to individuals is SAR 1969. In the light of its provisions, SAR courts have been established to expedite the process of restoration. The other important act has been PESA (1996), which has made provisions that the panchayat at the appropriate level and the gram sabha shall have the power to prevent alienation of adivasi land and take an appropriate action to restore any unlawfully alienated land.

Current Issues and Challenges: Mode and Process of Alienation

Land alienation can be defined both in a narrow and a broad sense. In the narrow sense, it could mean the alienation of individual landholdings and means of livelihood. In the broader sense, alienation includes the loss of common property and rural commons. Both communities and activists have been struggling to have both senses of alienation recognised. Adivasi

land has been alienated to both individuals and institutions. A number of micro studies, research papers and government committees have documented the process and mode of alienation in the post-independence period. Some important studies have been: Sinha (1968), Vidyarthi (1969), Sachidananda (1972), Thakur (1977), Gupta (1977), Maharaj and Iyer (1982), Sinha (1990), Sinha (1993), Oraon (1993), Iyer (1993), Bhatia (1997) and Sharan et al (1999). In addition, some unpublished reports have documented the process in detail, including, Oraon (1992), Kumar (1995), CSD (1997), Bihar Vidhan Mandal Joint Committee (1998) and GOI (2003).

Land alienation to individuals can be divided into four cross-cutting categories: namely, alienation in urban and rural areas as well as tribal to non-tribal and tribal-to-tribal alienation. In urban areas, alienation has been primarily demand induced – for housing (by outsiders) and non-agricultural purposes. This type of alienation has continued and accelerated in the post-independence period, and has affected both tribes and non-tribes. The majority of such alienation is illegal and methods include: collusive titles suits, collusive restoration suits in SAR courts, ‘chapparbandi’, ‘sada patta’, marrying tribal women, starting commercial enterprises with adivasis as sleeping partners, manipulating land records, and even forcible occupation of adivasi land.¹ In Santal Pargana transfers take place under the guise of gifts and exchanges known as ‘dan patra’, ‘badlanama’ or through the conversion of agricultural into homestead (basauri) land.² In rural areas, alienation is basically to meet the day-to-day needs of cash-strapped poor adivasis. In the absence of active land markets in rural areas, people resort to illegal mortgages and at times outright sales. There have also been cases in which adivasi land given to the ‘bhoodan yagna’ committee has been transferred to non-adivasi raiyats, and where pradans (village headmen) have settled lands on non-adivasis or raiyats from other villages for small considerations.

Functioning of SAR Courts/Restoration of Tribal Land

The restoration of illegally alienated land has been one of the important mandates of the Scheduled Area Regulation 1969. According to government records, up to 2001-02, 60,464 cases for restoration involving 85,777.22 acres of land were filed out of which 34,608 cases were upheld involving 46,797.36 acres of land and the rest were rejected. The possession of land could be given only in 21,445 cases involving 29,829.7 acres of land. The SAR court for the restoration of tribal land has been functioning in a most unsatisfactory manner resulting in the continued alienation of land. The courts have become centres of corruption and function mainly to legalise earlier illegally alienated land through collusive restoration suits. The compensation is brokered by the court itself. The provisions which ensure that there is no misuse of the ‘chapparbandi’ clause are hardly followed. In identifying the “substantial structure” that makes the land non-agricultural, the courts accept oral testimony and rarely order further investigation. Demands for restoration are rejected on very small and flimsy grounds like the discrepancy between the measurement of disputed land in the petition and that stated in the records, lack of records, etc. Even if the orders for restoration are passed, it takes a long time before the land is actually restored.

The lack of ‘amins’, police force, personnel, etc, are used as excuses. In some cases, in spite of court orders, the land does not get restored if the person who has taken it is influential. Another major problem has been that the records have been deliberately destroyed, especially in urban areas. It is also alleged that SAR courts have been manned primarily by non-adivasis who are not well conversant with adivasi customs and customary rights.

Institutional Alienation

The institutional alienation for ostensibly “public purposes” has been very high and some workable estimates are available [Ekka and Asif 2000]. The lands taken under this public purposes are both for big and medium projects (with some rehabilitation packages where habitations are disturbed) and small land acquisition without habitation being disturbed (and with only cash compensation). These projects include industry, mining, sanctuaries, dams, etc.

Land acquisition for public purpose and rehabilitation/resettlement has been an issue of agitating the adivasis of Jharkhand as well as other parts of the country. Due to a number of disputes regarding rights (both within and outside a family) there are reports of delays in compensation. Inadequate compensation for land and home structures, callous rehabilitation, virtually no compensation for the commons, and non-consultative and non-participative acquisition and resettlement are commonplace in Jharkhand. More land than required has been acquired. The misinterpretation of the words ‘public purpose’ and use of land acquired for purposes other than the ones intended (or notified) are also important issues. The communities and their customary rights have been by and large ignored in the state. A wide scale degradation of land due to mining and quarrying has affected even those whose lands are not acquired but who are affected by the wider health and environmental impacts of these processes.

Existential Realities and Current Challenges

After the formation of the new state new challenges have been added to the existing issues. Some of the most critical challenges currently being faced in Jharkhand are how to arrest the process of alienation of land and land rights of adivasis, how to make the process of land acquisition more pro-adivasi in particular, and more pro-people of the area in general, how to make the process of restoration of illegally alienated adivasi land more effective and how to restore the rights of the communities. Besides this, meeting the genuine demand for land for various economic activities by both adivasis and non-adivasis is also a challenge.

The current situation is complex. On the one hand, alienation of adivasi land to non-adivasis has declined due to the rise in consciousness and struggle for land as compared to the period from pre-independence onwards up to the 1980s when a large-scale alienation did occur. After 1969, the increased regularisation of illegally alienated land has been primarily through the SAR courts, the very institutions designed to check the problem. Adivasi land continues to be alienated for ‘public purposes’ like mining and industry, a process which will only accelerate with the Jharkhand government’s new industrial and mining policies (see George, this issue). The pace of intra tribal land transfers particularly to richer and dominant tribal groups from the poorer and ‘primitive tribal groups’ (PTGs) has increased, along with

the rise of a new elite and educated class among adivasis, who are aspiring for self-employment.

All these factors have led to a renewed debate over the land question. One view, voiced by people like the former CM Marandi, is that adivasi land should be freely sold to enable them to take advantage of market prices. At the minimum, they argue, certain restrictions should be relaxed, eg, adivasis should be allowed to sell to non-adivasis in urban areas, the SPTA should be brought in line with the CNTA to allow like transfers (eg, non-adivasi to non-adivasi), the necessary amendments should be made to allow adivasi land to be mortgaged to any public sector financial institution other than for the purposes mentioned in the two acts, conversion of agricultural land to non-agricultural use should be allowed, and there should be only one act for the whole of Jharkhand. The other view is that the two acts (CNTA and SPTA) be preserved as separate since they reflect specific conditions, that they be made more stringent to prevent alienation of adivasi land and that they should be amended in the light of PESA to give the gram sabha control over land, including the right of restoration.

Given such a multidimensional problem, a multi-pronged strategy is required to address it. The following are the major suggestions to meet the challenges:

(1) *Legislative measures*: A number of amendments are required in both CNTA and SPTA to plug the loopholes to discourage, penalise the alienators and to include the provisions of PESA, 1996. Some of these would include adding gram sabha wherever the DC is mentioned, to enable gram sabha monitoring of transfers, removing the limitation period for restoration of land, fixing a time limit for the restoration of such land, identification and restoration of alienated community land like sarna, jaherthan, etc, and ban on any future transfers.

(2) *Formation of an appellate authority and improving the procedure of restoration*: The restoration cases take a long time due to the number of appeals against the judgments of the SAR courts allowed under the present system. Besides, the functioning of the SAR courts have been far from satisfactory. It is important that an appellate authority is created with members from the judiciary, revenue department and ST members.

(3) *Time-bound disposal and restoration of cases*: Fast track/mobile courts should be established for the timely disposal of cases in the districts, where a large number of cases are pending. After the formation of Jharkhand, the rate of disposal has declined. One of the reasons has been the lack of revenue personnel to man the courts. For example, whereas earlier there were three functioning courts in Ranchi, now there is only one. It is also recommended that a task force at the circle level should be formed for restoration of land after the restoration orders are passed. There should be a monitoring cell at district level and state level for monitoring restoration.

(4) *Dissemination of information regarding the procedure for filing the cases*: A number of cases could not be filed because of lack of knowledge regarding the procedure. The district welfare department should conduct programmes for the dissemination of knowledge regarding the procedure and the provisions of the act.

(5) *Women's rights on land*: There is considerable difference in opinion regarding the land rights of women. Women have no rights of inheritance or ownership of immovable property, which included the right to bequeath and partition. There has been considerable resistance from adivasi communities for giving

inheritance rights to their womenfolk as they fear that that this would accelerate the process of alienation of adivasi lands through marriage with non-adivasis. The argument is that the traditional society has customary provisions for safeguarding the rights of women. The community provides social security to women particularly widows and unmarried girls. The other opinion is that they should be given full-fledged property rights. The rise in demand for property rights has come due to failures in some cases by the community to protect women's interests. In the light of Madhu Kishwar's case (on behalf of a Ho woman) wherein the Supreme Court had held that the demand for these rights should arise from within the tribal communities themselves, it is important that wider discussions be initiated on this issue within the adivasi societies. However, two suggestions are worth consideration.

– A number of incidences have been reported when the land was alienated without the knowledge of the female members of the family. When the family becomes landless, women and children have to bear the brunt. The joint ownership of wife and husband on land can be made statutory to prevent such alienation.

– Traditionally, widows have a right to use the land for maintenance during their lifetime but after their death, in the case of childless widows it passes to the nearest male agnates. In some cases it has been reported that the heirs connive with the local 'ojhas' and declare the widows witches, some times leading to a physical elimination. To prevent this, a clause should be added that in case of death of a childless widow the property be vested with the community who will distribute it to the landless in the village. As the direct beneficiary of such deaths cannot be predetermined, the dangers of physical elimination would be reduced.

(6) *Acquisition for public purpose*: The largest amount of land has been acquired for public purpose and practically half of this has been taken from adivasis. In comparison, only 25 per cent of adivasis were rehabilitated. In a large number of instances no compensation was paid for decades. The use of the principle of eminent domain to acquire land thus seems to many to be grossly unjust. It is important that the consent of the community must be taken before undertaking the acquisition under the provisions of the PESA 1996. There should be no displacement without prior acquisition; the resettlement and rehabilitation should be for the entire population living within the ecosystem acquired and not just the losers of private land; the area requisitioned should be subjected to social audit; rehabilitation should cover social, religious, economic and psychological aspects; and the land losers should be given a stake in the command areas and the industries created. It was the duty of the state to ensure that the quality of life of the displaced was not only protected, but it should also be augmented.

In Jharkhand, in many areas the land acquired for public purpose has remained unutilised because either the industry became sick or more land than required was acquired. All such land should be identified and returned back to the original owners proportionately for which necessary amendments can be made in the Land Acquisition Act as well as in the Coal Bearing Area Act.

(7) *Upgrading/updating of land records*: One of the reasons for non-restoration of illegally alienated land has been that the records are either missing or they have been mutilated. This, particularly in the urban areas, makes it difficult for adivasis to prove their claim on land. It is important that the land records,

which are kept at the district and the circle level, are updated and computerised. Some of these records are in Patna. The government of Jharkhand should try to get these records from Patna.

(8) *Development of agriculture and irrigational facilities:* One of the basic reasons for individual land alienation has been the non-sustainability and low returns from agriculture. As a result, adivasi farmers are unable to bear even a moderate shock and fall into debt and mortgage land. The proportion of irrigated area is very low and almost 90 per cent of the area is monocropped. An increase in irrigation facilities would reduce the need for a non-institutional credit which is a major source of alienation.

(9) *Enactment of law against usury:* There have been cases in which land banks and other banks provided institutional credit to improve agriculture. The recovery of the credit was initially very sluggish creating a general impression that the loans need not be paid. But recently a special drive has been undertaken to recover loans, for which the adivasis have had to alienate land. In some cases the interest has been three to four times more than the principal amount. In a few cases, it was reported that the adivasi was not aware of the loan, which could have been contracted by his father or may have been altogether benami. A law needs to be passed that in no case should the interest exceed the principal amount for institutional credit. This is going to help all categories of farmers.

(10) *Role of governor:* As per the provisions of the Fifth Schedule of the Constitution the governor has to play an important role in prevention of land alienation. Unfortunately a number of Governors have not taken enough steps in this regard. There seems to be a general confusion regarding the role of the governors. It is important that the governor's secretariat has a special cell which can prepare its own report on the land alienation. This can put an additional pressure on the government.

(11) *Measures to fulfil short-term credit needs:* Some effective measures are required to meet the small short-term needs of the tribes to prevent mortgages and alienation of land. For this, the formation of self-help groups (SHGs), grain golas and seed banks for grain and seed loans, should be encouraged.

(12) *Initiation of social reforms and social consciousness amongst the community:* In some cases, alcoholism and gambling has been the cause of alienation of land. The cockfight, 'habba-dabba' (a form of gambling) and drinking is quite common in the village markets. The local traders/non-adivasis/mahajans have used this weakness to alienate the land. In a very limited number of cases it has been reported that land is alienated to meet the fines imposed by the community. Some social reform movements could restrict such alienation.

To sum up, land alienation has been an important issue plaguing the tribal areas for almost two centuries. Recent studies indicate that the pace of alienation has declined primarily due to the consciousness and struggle of the tribes. While the need to arrest alienation is now recognised, new threats have emerged, including class differentiation within the adivasi community. The basic issue remains that the illegally alienated land of the tribes should be restored to them, the alienation of further land restricted and a fresh approach adopted towards acquisition of land for public purpose so that the tribes are not victims, but partners in the process of growth. [27]

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Notes

- 1 In collusive restoration suits, both sides agree that the land was alienated before 1969 or 30 years previously, whereupon it is legalised by the court. Chapparbandi involves the conversion of agricultural land into non-agricultural use by declaring it homestead land and unfit for cultivation. This usually requires the collusion of government officials. Once land is converted to non-agricultural use, it can be freely sold. 'Sada patta' involves getting a sale deed written on ordinary (sada) paper instead of registered on stamp paper. Non-adivasi men marry adivasi women and buy land in their names.
- 2 'Badlanama' is an exchange of land with the permission of the DC. This exchange is to be only between 'raiayats' of the same village or contiguous villages, and of similar value. However, it is used to exchange lands in rural and urban areas.

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