

## Land Rights in Jharkhand: an Analysis of Chhotanagpur Tenancy Act

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### ABSTRACT

The graph of the incessant conflict between the state and the people in Jharkhand on the issue of ownership and the usage of livelihood resources has once again shoot up in recent years. Consequently the governance of the state has entered into a critical phase. Resource alienation by both state and private parties has created social unrest, at a scale unprecedented in the post independence period. People's struggle for survival exhibits two dimensions. The struggle without has as usually an impact on the struggle within. However, the gender struggle within the society has now taken a different turn as compared to the previous phases. Suppressing females in the name of 'cleansing' the society by the dominant males has now been replaced by the loud demand of the females for their resource rights. An effort has been made in this paper to understand the nature of these conflicts, in term of time and space, and also to come out with a set of recommendations for civil society interventions with a view to resolve the conflicts by democratic means.

**Keywords:** CNT, Tribe, Munda, Manki, Bhuinhar, Khuntkattidar

### INTRODUCTION

Jharkhand has witnessed distinct relationships between cultivators and the land that they cultivate or use as pasture in a sequence spanning over a period of about four hundred years.

The changing relations may be seen in all its dimensions, economic, political and cultural, economic being the primary one. Which are as follows?

#### The Norms

In the pre-state time norm were, 'he who sows, reaps the yield'. But the land belonged to the lineage or in some cases to the village community.

That was the time people cleared the forest, established villages and prepared cultivable fields in cooperation with each other. Families were the usufructs of the land, not the owner. Land was considered to a part of the Mother Nature that demands regular propitiation of the guardian spirits.

Swidden and settled agriculture gave rise to a distinct cultural life along with the spiritual significance of land. The new settlements developed a political system of decision making about the usage and management of land.

#### Primary or Jungle State

In this, the same relationship continued to exist but with a difference; the cultivators paid tribute or chanda to the Rajas as the 'protectors', not as the owners of the land.

The Hindu Rajas introduced the Pauranic Hinduism and the Muslim Jagirdars brought in the popular traits of Islam in the forest clad upland. The villages were considered to be loosely connected to the larger state system of the plains.

#### British Colonial Period

The cultivators became tenants and are forced to pay regular tax to the landlords. People lost control and ownership over their ancestral land, forest and water. Land was put under proprietorship. The crown retained ownership of the land. Newly formed class of Zamindars became the harbinger of Brahminic Hinduism. Christianity was introduced to the original holder of land in the process of their struggle for land rights. Colonial political system engulfed Jharkhand.

#### Post Independence Period

The cultivators continue to remain tenants and pay tax to the state, the ultimate the owner of the land.

Throughout these four stages of transformation of the relationship between the cultivators and the land the issue of land rights of the cultivators remained the most contentious issue.

### TERRITORIAL IDENTITY

The territory under the present state of Jharkhand was a part of a much larger topography of Great Central Indian Forests (Habib: 1982) that occupied whole of central India between the Gangetic plains in the north and the Deccan plateau in the south. Even before 13<sup>th</sup> century it was called Jharkhand (Mathew: 2003), the land of the forests, without, however, having any definite territorial identity. The region remained outside the pale of the empires and kingdoms of the plains till the emergence and consolidation of primary states, or jungle states, in the 17<sup>th</sup> century (Sinha: 1987). Among them the largest one, the Chhotanagpur Raj was the first to be recognized by the Mughals. The other neighboring smaller ones were forced to be the part of the empire in the following years. All of them put together came to be known as Jharkhand, a Persian word, and became a part of the 'Subah of Bangal'. The British East India Company received the Dewani, responsibility of tax collection, from the Mughal Emperor Shah Alam II in the year 1765 of the subah or the province. 'It is in the year 1770 that the first entry of British in Chotanagpur seems to have taken place' (Roy: 1912). But it took them about one and half century to establish complete control over the land. To break the steep resistance of the people the colonial state divided the land into four parts and attached them to the provinces of Bihar, Bengal, Orissa and the Central Province (Later was called Madhya Pradesh).

The princely state of Chhota Nagpur was the first to be brought under the administration of the East India in 1834; it was called the South-West Frontier agency. The Kolhan Government Estate was added to it in 1838. Later, emerged two divisions, Chota Nagpur (with the area of the Agency) and the Santal Parganas (in 1855 first and then with a smaller size in 1857). Present Jharkhand is the combination of these two divisions. In the post colonial period the government, in response to the popular demand of a separate state of Jharkhand with all the three parts, carved out only the Bihar part of Jharkhand as a separate state in 2000 and christened it by the same name. Now it is often said that the Tribals are in minority in Jharkhand comprising only about 26.1% of the total

population. This is misleading because it is the figure of the Scheduled Tribes only. But if one notices the percentage of cultivators the actual percentage of the Adivasis of Jharkhand would be revealed.

Obviously, there is no wonder that the outsiders of all hues would oppose this so called policy of 'paternalism and isolation' after independence. A steep demand against it emerged from the quarters of bureaucracy and political parties, anthropologists and economists, even in the earliest time of the nations 'tryst with destiny'. Verier Elwin stood for the continuation of this policy for the protection of the tribes from their rapacious neighbors and under his advice Jawaharlal Nehru proclaimed his Tribal Panchsheel for the administration of the Scheduled Areas with the same spirit.

### MAKING OF THE CNT ACT 1908

The greatest event in the process of buying peace in Chota Nagpur by the colonial rulers was the making of the Chota Nagpur Tenancy Act 1908. All along, the process of colonial law making was marked by a common feature; administrative reform coupled with a new legislation always happened in response to popular revolts against the colonial rule. Rent Act of 1859 came in the wake of indigo riots, Bengal Tenancy Act 1885 came after the peasant revolt of 1872-73, and Chotanagpur Tenancy Act 1908 was not an exception to that rule. This was the final truce between the rulers and the rebelling indigenous peoples. The process that began with the Wilkinson's Rules found a mature shape in this Act. For the historians it 'innovated many provisions to give protection to the aboriginal tenants and became a piece of model legislation' (Singh. 1985). J. C. Jha quoted Reid, 'The Government was obliged to give salutary effect to the principles, which the authority of the Agent enforced in the early days of the South West Frontier Agency' (Jha. 1964). For Das Gupta, 'CNT marked a watershed in the history of the colonial state intervention in land relations in Chota Nagpur' (Das Gupta. 2011). However, one should not overlook the fact that CNT was the outcome of the gory Munda rebellion that ended in 1900. To understand this process of reaching an agreement with the indigenous peoples that took about a century demands brushing up of our knowledge of history of the same period. British East India Company introduced the Permanent Settlement of land with the highest bidder of annual rent in 1793 and replaced the old

landlords, Rajas, Jagirdars etc. by a new class of landlords called the Zamindars. The rent that the highest bidder promised to pay to the Company was fixed permanently. He was to keep one tenth of the rent he had collected from the cultivators as his share of the booty. In addition to that the Zamindars was to be awarded the benefit of any future increase in the value through expansion of cultivation of fallow land. For the first time in the history of Bengal (that included Bihar, Orissa and Chota Nagpur), the proprietary rights of land went to these Zamindars, whom Rabindranath Tagore called 'parasites of the society', and Edmund Burke, 'the wickedest of the human race' (Majumdar. 2011). However, Cornwallis, the architect of the new system, was sure of the success of it, he said, 'the proprietors (the new class of Zamindars) of the land should be attached to us from motives of self interest' (Majumdar. 2011). Moreover, in addition to the fixed rent the Permanent Settlement also introduced a rigid principle of paying the rent in cash and thereby brought 'money' into the agrarian system. The new system also introduced the British system judiciary and replaced the old ones largely based on customs. The peasant was reduced to the status of semi-serfs.

The extension of the Permanent Settlement of 1793 to Chota Nagpur created a huge social and political turmoil. It played havoc to the very existence of the original settlers of the land. K. S. Singh rightly observed that the Zamindari system shook the Munda society by its roots. During the period between 1779 – 1833, Sharat Chandra Roy observed, "... the country was in a most distracted condition. The worst of all evils were, however, the ceaseless aggression against the ancient landed rights of the aboriginal population, which led to repeated insurrections..." (Roy 1912). On the face of a steep resistance put up by the indigenous peoples (the so-called aboriginal tribes, as the colonial administrators identified them) the Cornwallis' system had to retreat and, as we have mentioned in the previous chapter, a rather liberal approach of Monroe and Matcliff was adopted. The new concept of 'peasant proprietor' was accepted to pacify the revolting people.

J. C. Jha maintained that, 'The inauguration of the South West Frontier Agency marked the beginning of a twenty year period of peace in the tribal area, a peace made complete after the incorporation of Singhbhum in the Agency in 1837' (Jha. 1964). However, Sharat Chandra

Roy observed, "...the jagirdars and thikadars ... continued their campaign against the aboriginal peasant-proprietors steadily though silently. As Coronel Dulton wrote in 1871, 'it was then that the greatest disturbance of peasant proprietary tenure occurred.' (Roy 1912)

Immediately after the Sepoy Mutiny the Civil Procedure Code (Act VIII of 1859) was extended to Chota Nagpur with a provision that "no sale of immovable property shall take place without the sanction of the Commissioner". But the Board of Revenue declined to introduce it and suggested the modification of the existing procedure in accordance with the spirit of the Act. As a result of that the seizure of land in order to obtain payment of money owed was not acted upon but the sale of lands in execution of rent decrees continued to be exercised with the previous sanction of the Commissioner in each case.

After the "conflicts and affrays that had occurred in Sonapur and Basia in the year 1858, were suppressed, ... the authorities at length saw that the only effectual mode of preventing a repetition of such affrays and riots would be to remedy the grievances that had given rise to them. And accordingly, under the Government orders, dated the 15<sup>th</sup> April 1858, Lal Loknath Sahi, a local Zamindar and a Sub-Assistant Commissioner, was deputed to prepare a register of all Bhuinhari lands" (Roy. 1912). However, he died even before completing a small part of his task in 1862. Actually the whole effort was half-heartedly planned and was withdrawn subsequently after his death. Thus the dispute between the landlords and tenants broke out afresh after that. "And at length, with a view to an authoritative settlement of the title of Bhuinhari lands, the Chotanagpur Tenures Act was passed by the Bengal Council on the 26<sup>th</sup> July 1869" (Roy. 1912). The background of the act was formed, with the realization of the fact of the Munda's relationship with his ancestral land, on the part of the colonial rulers. S. C. Roy quoted a top level officer's account, "The value the Bhoonears attached to their land is very great: nothing will ever reconcile them to be deprived of it. They are always buried in the villages where their Bhoonearee lands are situated, and even if they die at a distance, their hairs consider it a necessary act of piety to transport their bones to their own village, that they may be buried in the Harsali, or burying ground of the village. The disturbances in Nagpur in 1832, was caused by no one cause so much as the dispossession of the Mundas and

the Mankis, who are the Bhoonears of Sonepur, of their lands, and until the Bhoonears are protected in the possession of their lands, we never can be certain of the peace of the country.” (Roy. 1912)

Under the operation of the act a large number of disputes were heard and disposed. But soon the expectations of the framers of the act as to its success of removing all grievances and allaying all disturbances were found out to have been but illusive. Roy pointed out the reasons. Firstly, the act came too late. “The results of the Bhuinharee settlement under Bengal Act II 1869 revealed how great had been the havoc committed on the Bhuinharee lands in the half a century that preceded the passing of the Act. Hoffmann’s observation under Nalis

The second reason was that the Zamindars and Thikadars were successful in befooling the Bhuinhars by spreading the news that the purpose of the survey was to enhance the rent and therefore, the Bhuinhars should refrain from declaring their actual possession of land. They even enticed the Bhuinhars with ‘good amount of pork and liquor’. The missionaries who even translated the government orders in Mundari language to convince the Bhuinhars to declare their actual possession of land were blamed to be the agents of the British administration and most of the non Christian Bhuinhars believed it. As a result of that a huge portion of land under the possession of the descendants of the original settlers of the village was not recorded in their names and eventually was claimed by the Zamindars and Thikadars.

The third cause was the non-recognition of the Bhuinhars’ rights over the forest, timber and fruit-bearing trees and the exclusion of the Khuntkatti tenure out of the scope of the Act.

Thus the conflict between the Zamindar and Thikadar combine and Mundas and Uraons of Ranchi district continued with sporadic skirmishes and scuffles. However, at this stage a new form of movement emerged with the help of the missionaries, Known as the “Sardari Agitation” or “Muluki Larai”. The Christian social leaders, called the “Sardars” took the path of peaceful agitation by taking recourse to the colonial legal system. Memoranda and petitions flooded the courts of law. The common point was that the whole of Chota Nagpur belonged to the Mundas and the Uraons, therefore, the government must give them back their lost land and allow to form themselves into village communities directly under the government.

(Interestingly this was what the PESA Act 1996 contains). The government found these claim and prayer unreasonable and extravagant under the changed condition of the country and necessarily rejected. However, even though the government came out with new Legislatures, none of them grappled with the most crying grievances of the people. Chota Nagpur Landlord and Tenant Act of 1869 failed to effect any appreciable improvement in the relations between the Mundas and their landlords.

‘After 1882 the free sale of landed property led to a recurrence of serious abuses and of consequent disturbances, such as Sardari Larai of the 1880s and the Birsait movement of 1895-1900’ ( Jha. 1964:239) The “Birsait Rebellion” or the popularly upheld “Ulgulan” (the great tumult) forced the colonial state to look for a ‘radical cure for the discontent amongst the Mundas, which had now become chronic’ (Roy: 1912:204). The outcome was the Chota Nagpur Tenancy Act 1908. The Survey and Settlement operation began in 1902 covering 1,846 square miles of the then Ranchi district.

Colonial state largely recognized the rights of the tribal (aboriginal) communities over their land as the ‘original reclaimers’ of the same and called them ‘peasant proprietors’. They were put at par with the Zamindars, the class that was created as proprietors. They were categorized as the Bhuinhars and the Khuntkattidars.

‘Kumar Suresh Singh summarized the salient features of the act, ‘The Act marked the end of a century of agrarian strife and was an event of capital significance. It was the culmination of legal and administrative measures taken so far to remove the agrarian discontent: the Chotanagpur Landlord, and Tenants Procedure Act of 1879, and finally, the Commutation Act of 1897 were only stepping stones to it. Its object was to “supersede and consolidate the Acts in force in the division, to improve and amplify the procedure and to improve and complete the substantive law by embodying in it certain provisions of the Bengal Tenancy Act and some additional provisions” which affirmed “local customary rights and usages” (Singh: 1985). Legal sanctity to the customary rights for the first time extended to women’s legal rights to land and its produces.

One must remember in this context that one of the important contributors to the farming of the CNT Act 1908 was Reverend Father John Baptist Hoffman, S. J., a German Missionary who devoted his life first to know the people

and then to stand firmly on the side of them in the days of their utter suffering. He submitted 'The Special Memorandum on the Land System of the Munda Country' along with Mr. E. Lister, ICS, to the government to understand the Munda people and their social structure, customs and land system. On receiving the first edition of the Chota Nagpur Landlord and Tenant Procedure Act (the precursor of the CNTA) with a letter of appreciation of his contribution dated 6th March 1905, Hoffman wrote in his great Encyclopaedia Mundarica,

"For more than a hundred years the Mundas were culminated as savages or semi-savages, whose claims were too exorbitant and absurd, to be listened to, as stubborn rebels, whom nobody could satisfy, and therefore, justly subjected to severe military reprisals as 'saar kol's, who were fit for nothing but for carrying burdens and be serfs. And now after a cruel martyrdom that lasted all too long, their claims have been recognized officially as having been perfectly right, and their land system appears as one of the wisest creations of prehistoric times...Therefore, the act is a justification of and a rehabilitation of the highest moral value. "But the benefits of the Act were not limited to this rehabilitation of the race, nor to the small number of those whose ancient rights were now officially recognized.

They extended to absolutely all raiyats of Chota Nagpur... "Since up to that time ... no raiyat could for a single day, be sure that he would be left in undisturbed possession of the fields the robbers have so far left to him because he had not a scrap of written evidence that they were really in his cultivation.

Any day a Zamindars or one of his creatures might turn up in court and claim one or more of those fields as being in his own cultivation... "And now at least every field was measured and registered in the name of those whom the settlement found in actual possession, and every raiyat received a so-called parchai enumerating the fields in his cultivation. This put an end to all vexatious lawsuits...

"Thus the settlement literally resembled a calm, sunny morning after a long destructive hurricane, which had reduced all the Mundas to extreme poverty and had thrown hundreds of thousands for ever far away from their own dear country... "To me who had been forced to witness and feel the horrid sufferings of the Mundas for so many years, it afforded one of the greatest joys of my life" (Hoffman. 1950)

However, so far as the safeguard of "Khuntkatti right" was concerned, the Act came rather late for more than "nineteenths of the race". Only 156 villages could be secured as intact Mundari Khuntkatti villages.

The Act and the results of the Settlement fell short of some Mundas' expectation; many points of leakage in the Act remained: moneylenders were as active as ever, and the alienation of land could not be totally stopped (Singh: 1987).

### CNTA RECOGNIZED THE FOLLOWING CATEGORIES OF LANDHOLDERS

#### Mundari Khunt-Kattidar

The descendants of the Munda founder of the village are called thus. He along with his lineage brothers owns the village including the land and the forest within its boundary. They do not pay tax but rent for the land.

According to the Settlement report of 1927 there were only 156 intact and 449 broken Mundari Khunt-Katti villages survived in RANCHI District. In the intact villages the land is under the control of the Mundas only whereas in the broken ones people who are not the descendant of the original founder, including non-tribals, have occupied land.

#### Bhuinhari Tenure

These are lands in non-Mundari areas, which have been reclaimed and brought under cultivation by original claimants of the village or their descendants. They enjoy the status of tenure-holders, and hold lands either rent free or at quit rent fixed in perpetuity. The total area of the Bhuinhari land according to the last Settlement was 215 sq. Miles.

#### Raiyats Holding Khunt-Katti Rights

In non-Mundari areas, excluding the villages covered by Bhuinhari land, the descendants of the original founders of the village in occupation of the land cleared from the forest are known as raiyats having Khunt-Katti rights. The number of Khunt-Katti tenancies recorded in the last survey was 938.

#### Raiyats

Excluding the above-mentioned privileged tribal tenures, there are other raiyati lands held by non-Khuntkattidar tribal and other castes.

With the gradual breakdown of the tribal land system due to the invasion of the non-tribals in the region, these tribal tenures are gradually

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becoming extinct, and now a majority of the holdings are ordinary raiyati lands. Under the raiyat a system of subletting is also prevalent in the region.

### CONCLUSION

Thus it can be said that the Mundari Khuntkati system of Ranchi is not the same as that of Singhbhum. In Ranchi the Khuntkattidars enjoy such rights as fixed rent, rights in forests and waste. But in Singhbhum the rent could be enhanced and there are no khuntkatti rights over unreclaimed land. (Singh, 1985) Adivasis (not just the Scheduled Tribes) have walked a long way in their interaction with the colonial and Indian nation state.

But they could not be integrated with the state system of either kind. Is it their fault or they have been systematically kept outside the state process by the builders of the state? This is a big question in-front of the democratic government. And it is essential to make specific policies for their development, so the present context of pathalgarhi kind of act can be stopped.

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