

Tribal Rights and Protective Legislations in Odisha - An Overview

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Abstract

One of the most marginalized communities in India vulnerable to poverty and exploitation are the Adivasis. Despite provisions in the Constitution and enactment of several laws by the central as well as by the state governments to protect their rights and interests the Adivasis continue to remain at the bottom of the development index, suffer exploitation and deprivation in various ways. Even after six decades of developmental planning high incidence of poverty still found among the Scheduled Tribes. In the state of Odisha which contains a sizeable tribal population around 73 per cent of Scheduled Tribes were estimated to be under below poverty line in 1999-2000. In rural areas of the country they continue to face multiple disadvantages and lack access to land, education, institutional credit and markets etc. In fact since independence the main objective of the policy & planning in India with regard to the development of tribals and other backward communities has been to uplift the communities especially from oppression and backwardness in order to bring them to the mainstream of national life. The inroad of 'alien' outsiders in the tribal tracts, their stranglehold over the resources like land and forests in collaboration with the government and the loopholes in the laws enacted for the protection of their rights and the lack of awareness among the tribals regarding such provisions have contributed to the present plight of the tribals in Odisha especially in making them impoverished and deprived.

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Introduction

One of the most marginalized communities in India vulnerable to poverty and exploitation are the Adivasis. Despite provisions in the Constitution and enactment of several laws by the central as well as by the state governments to protect their rights and interests the Adivasis continue to remain at the bottom of the development index, suffer exploitation and deprivation in various ways. High incidence of poverty still found among the Scheduled Tribes (ST) and as data indicate in 1999-00 the incidence of poverty among the STs was persistently higher in several states viz. Odisha, Bihar, Madhya Pradesh, West Bengal and Maharashtra (Biradar, 2012). In the state of Odisha which contains a sizeable tribal population around 73 per cent

of Scheduled Tribes were estimated to be under below poverty line in 1999-2000. Further the ST communities are the least literate in Odisha compared to the other communities and the 2001 census data indicate that the literacy rate was only 37.4 per cent significantly lower than the literacy rate of 55.5 per cent for the SC communities (Government of Odisha, 2012). In rural areas of the country they continue to face multiple disadvantages and lack access to land, education, institutional credit and markets etc. In fact since independence the main objective of the policy & planning in India with regard to the development of tribals and other backward communities has been to uplift the communities especially from oppression and backwardness in order to bring them to the mainstream of national life. Thus both promotional and protective measures have been adopted at the central and state levels to ensure that they do not trail in the path of development. However, this paper intends to examine the legislative measures adopted by the Government of Odisha and the Central Government to safeguard the rights of the Scheduled Tribes in the state and the impact & efficacy of the measures in achieving their goals.

The paper is divided in to five sections. Section I reviews the constitutional provisions for the protection of interest of the weaker sections. Section II examines the composition and settlement of the tribal population in Odisha and state of tribal areas during the colonial rule. Section III reviews the protective measures adopted by the State Government as well as by the Central Government to control money lending, the system of bonded labour and alienation of tribal land in the state. The concluding section summarizes the state of tribals in Odisha with regard to their vulnerability to the aforementioned practices.

I. Constitutional Provision & the Weaker Sections

The Constitution of India visualizes the development of the weaker sections of the community especially the SCs and STs as the ardent duty of the Central & State Governments. Article 46 of the Constitution states: “The state shall promote with special care the educational and economic interests of the weaker section of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustices and all forms of exploitation”(Basu, 1981). The Scheduled V to the Constitution contains many provisions in the interest of tribal areas. Article 244 empowers the President of India to declare an area inhabiting predominant concentration of tribal population as scheduled areas. The Constitution also empowers State Governors to modify the existing enactments and to make regulations for Scheduled Tribe people on the advice of the Tribal Advisory Council for maintaining peace and good governance in the scheduled areas (Behuria, 1991).

II. Tribal Population and Scheduled Areas in Odisha

Odisha one of the poorest state in India in terms of human development index, is the home to the third largest tribal population in the country (as per 2001 census). The ST population constitutes 22.13 per cent of the total population of Odisha (as per 2001 census) and 10.38 per cent of the country’s population (Ratho, 2007). The

Tribals mostly inhabit the western hilly regions of the state. The ST population in the state is overwhelmingly rural with 94.5 per cent residing in villages as compared to the state total of 85 per cent people living in rural areas. The areas with predominantly tribal population have been declared as scheduled areas under Part-C of the 5th Schedule of the Constitution of India. In Odisha, the district of Koraput except the Kashipur Tahasil, Mayurbhanj, Sundargarh, the Ganjam Agency areas, the Kondmals and the Baliguda sub-division of Phulbani district barring the Chakapad block were specified as scheduled areas under the Constitution (Scheduled Areas) Order, 1950. The Scheduled Area Order, 1950, was revised in 1977 and some more areas were included in the specified scheduled areas in the state. Those are Kashipur of Koraput district, Chakapad block of Baliguda subdivision in Phulbani district, Kendujhar Tahasil, Telkoi Tahasil, Champua Tahasil, Barbil Tahasil of Keonjhar district, Thuamul-Rampur Tahasil and Lanjigarh Block of Kalahandi district, Nilgiri Block-I of Nilgiri Tahasil of Balaswar district and Kuchinda Tahasil of Sambalpur district (Behuria, 1991). The scheduled area covers about 44.70 per cent area of the state. It extends over 118 blocks in 12 districts containing about 68 per cent of the total tribal population of the state.

Tribal Areas in the Pre-independence period

During the Colonial period the British kept the tribal areas isolated and enacted specific laws for the administration of tribal areas and the protection of their interests. Several acts viz. the Scheduled Tracts Act, 1870, Scheduled Districts Act, 1874 and Government of India Act, 1919 were enacted by the British and under these Acts areas with large concentration of tribals were segregated and administered separately with the areas remaining outside the jurisdiction of normal administration. However for giving special protection to the tribals, the Government of India Act, 1935 provided for the creation of 'excluded' and 'partially excluded' areas (Ratho, 2007). In Odisha the districts of Koraput, Sambalpur, Angul, Kandhmals and the Ganjam Agency tracts were the 'partially excluded areas' under the Government of India Act, 1935. In fact, the isolation of the tribal communities from the rest of the population and the non-applicability of normal rules of administration in the tribal areas made the tribals an easy prey to exploitation of different types (Gupta, 1998).

After the formation of the province of Odisha in 1936, the first Congress Ministry (1937-39) appointed a committee in response to the demand made by some members of the Odisha Legislative Assembly to investigate on the economic and social backwardness of the tribal people. The 'Partially Excluded Areas Enquiry Committee' constituted under the chairmanship of A. V. Thakar by the government in December, 1938 was asked to study various problems of the 'partially excluded areas' and recommend special measures for the good of the Scheduled Tribes. The committee in its report submitted in September, 1940 reported that the Adivasis suffered from indebtedness for a long time due to professional moneylenders and businessmen from the plains. The committee reported the wide prevalence of the system of debt bondage i.e., Gothi in certain areas of the state which practically

had degenerated into a kind of serfdom (Rath, 1977). It is generally seen that owing to extreme poverty, ignorance, the tribals face exploitation and harassment by non-tribals, mahajanas and contractors. A natural corollary to these, are the transfer of land from tribals to outsiders. This is not the case in Odisha but in different parts of the country. However after independence laws have been enacted in Odisha like many other states to control usurious money-lending, bonded labour system and land alienation.

III. Protective Measures

Money-lending

In the absence of any other convenient sources of rural credit in the countryside during the colonial period the money lenders had remained the main source of rural credit. In fact the moneylenders had not only monopoly in the rural credit but they often subjected the people seeking loans from them to a lot of harassment and exploitation by charging exorbitant interest rates (Myrdal, 1982). The Orissa Money-Lenders' Act 1939 which was enacted to regulate money lending transactions and to give relief to the debtors was extended to the 'partially excluded areas' of the state with effect from 6 April, 1940. However certain clauses of the Act viz., clause 4, 5, 6, 7, 18 and 19 were not made applicable to those areas. These clauses provided for the registration of the moneylenders, maintenance of loan register by the moneylender showing therein the name of the debtor, date of loan, amount of principal and the rate of interest, and to issue a stamped receipt to the debtor for every payment made by him. These provisions were, however, made applicable in the 'partially excluded areas' under the Money-Lenders' Regulation, 1951 (Senapati & Sahu, 1966). Certain new provisions were also made in the Regulation in order to safeguard the interests of people of those areas. Under the Regulation a court was authorized to pass a decree for interest charged in excess of the prescribed rate at 9 and 12 per cent per annum on secured and unsecured loans respectively.

To control and regulate the business of money lending in the scheduled areas of the state, the Orissa (Scheduled Areas) Money-Lenders' Regulation, 1967 known as Regulation 2 of 1968 was enforced with effect from 1 November, 1969. The Regulation contained provisions similar to the Orissa Money-Lenders' Act, 1939. Under the Regulation, a moneylender was defined as a person whose business was that of advancing and releasing loans including a 'mandi' merchant and a trader. A 'mandi merchant' was defined as a person who advanced money on the security of any standing crop or produce. The Regulation provided that no person could carry on the business of money lending in the scheduled areas without obtaining a license. The Orissa Money-Lenders' Act, 1939 was amended extensively in 1975 to control money lending business and provide relief to the debtors in non-scheduled areas of the state. It provided that no moneylender could charge interest at a rate exceeding 9 per cent on secured loan and 12 per cent on unsecured loan and in no case the interest on any loan in excess of the principal was to be recovered (Behuria, 1991).

These provisions were extended to the scheduled areas of the state by the Orissa (Scheduled Areas) Money-Lenders' (Amendment) Regulation, 1976. Besides these provisions, under the amended Regulation a moratorium was imposed for a period of two years on execution of a decree against debtors who possessed less than two and half acres of agricultural land with agriculture as the main sources of income, or landless agricultural labourer. The Government of Odisha has amended the Orissa (Scheduled Areas) Money-Lenders' Regulation, 1967 in 2000 (Regulation I of 2001). It empowers the Gram Panchayat to exercise control over money lending in the scheduled areas and provides that a money lender could advance loan to a Scheduled Tribe only with the approval of the Gram Panchayat and the concurrence of Gram Sasan. For loans advanced without the recommendation of the Gram Panchayat the debtor would not be liable to repay the loan amount or its interest (Ratho, 2007).

Gothi System

One of the evils in the practice of usury in the state during the colonial rule was the system of Gothi, a form of bonded labour. The system was prevalent among the tribals in the tribal areas of Ganjam, Phulbani, Koraput and in some parts of Kalahandi district. Under the system the debtor, called the Gothi or Khambari, was under the obligation to work under the creditor for a number of years till the debt was repaid with interest. In certain instances the successor of the debtor also rendered service under the creditor as the debt remained unpaid in the life time of the debtor. This system was prevalent not only in Odisha but in many states in different garbs and by different names. In Rajasthan it was called sagri, in Andhra vetti, in Mysore jeetha and in Madhya Pradesh naukarinama and mahidari etc (Choudhury & Choudhury, 1982).

Soon after independence, the Government of Odisha enacted the Orissa Debt Bondage Abolition Regulation, 1948 which came to be known as Orissa Regulation I of 1948 after receiving the assent of the Governor-General on 7 June, 1948. The Regulation provided that a Gothi agreement and any other agreement of similar nature entered into after the commencement of the Regulation was to be treated as void (Government of Odisha, 1961). It also provided for the termination of Gothi contract either on the application or at the initiative of certain revenue authorities and in certain circumstances penalties on the creditor. The Bonded Labour System (Abolition) Act, 1976 enacted by the Central Government came into force in the whole country with effect from 4 March, 1976. Under the Act the bonded labour system was abolished (Srichandan, 1993), the bonded labourers were freed and discharged from the obligation of rendering any bonded labour or to repay any bonded debt remaining unsettled. The Orissa Debt Relief Act, 1980 also provided relief to the ST debtors in the state by laying down the provision that debts incurred by scheduled debtor before the commencement of the Act including the amount of interest payable on such debt as deemed to have been fully discharged. Further the civil courts were debarred to entertain any suit or proceedings against the scheduled debtor for recovery of debt and interest. The Act came into force with effect from

13 March, 1981 (Behuria, 1991). In pursuance of the provisions of the Bonded Labour System (Abolition) Act, 1976 and with the objective of preventing them from relapsing into bondage again the liberated bonded labourers are socio-economically rehabilitated by the government. By the end of 2010-11, 50,792 bonded labourers including 13,904 SCs and 20,424 STs have been identified in the state. About 41 per cent of them belong to the undivided KBK district. Out of 50,792 bonded labourers 49, 013 have been released and out of them 47,056 including 13,121 SC and 18,369 ST have been rehabilitated in various economic activities (Government of Odisha, 2012).

Land Alienation

The appropriation of forest produce of the tribals and their land by moneylenders and traders in western Odisha is a well known fact. This unscrupulous practice has been in operation in the region since the late 19th century and this has found reflection in numerous studies (Mearns & Sinha, 1999). The British however in pre-independence period tried to grapple the problem and under the Agency Tracts Interest and Land Transfer Act 1917, the transfer of immovable property belonging to Hill-Tribes within the agency tract was prohibited unless the transfer was made in favour of other Hill-Tribes or with the previous permission in writing of an authorized officer. For the ex-states areas similar provisions prohibiting transfer of land existed in the Administration of Orissa State's Order, 1943 and it later found place in the Orissa Merged State (Laws) Act, 1950. The provisions provided that no transfer of holding from a member of aboriginal tribe to a member of non-aboriginal tribe was to be valid without the previous permission of the sub-divisional Magistrate (Senapati & Kuanr, 1977).

The era of reconstruction and development started in the state after independence with some big projects coming up in tribal areas which brought in its wake displacement and avenues for alienation of tribal land. Further with the abolition of zamindari system and its feudal arrangement, tribals became the immediate subjects and tenants under the state and became exposed to non-tribal moneylenders, traders and contractors. Hence the Government of Odisha passed the Orissa (Scheduled Areas) Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 with the objective of checking the transfer of land from the tribals to non-tribals. The regulation came into force in the scheduled areas of the state from 4th October, 1956. However the Regulation left some room for manipulation as it permitted the transfer of land from tribals to non-tribals with the previous permission in writing of the sub-collector. The Orissa Land Reforms Act, 1960 which contained certain provisions in section 22 & 23 for the protection of the interest of Scheduled Tribes in non-scheduled areas came into force with effect from 1st October, 1965. Section 22 and 23 of the Act provided that the transfer of lands from people belonging to Scheduled Caste and Scheduled Tribe to people of other castes was to be declared void unless it was made with the previous permission in writing of a Revenue Officer. All transfers in contravention of this provision was declared illegal and the restoration

of lands to the Scheduled Caste and Scheduled Tribe people was provided in case of illegal transfer (Government of Odisha, 1987).

In 2002 the government amended the Orissa (Scheduled Areas) Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956 and the amendment provided for complete ban on transfer of land belonging to ST persons to non- ST persons in tribal areas of the state (Sahoo & Dharmalingam, 2006). It also laid down the provisions that all non-tribals owning land originally owned by tribals are required to submit the evidence within a year that the land they have acquired through legal means, otherwise the land would revert back to the original tribal owner and the fraudulent land grabber would be penalized with imprisonment and fine. The last amendment to Regulation 2 of 1956 has been made in 2008 and it provides for complete ban on transfer of tribal land to non-tribals but with certain relaxation as in case of gift or exchange for public purpose or mortgage execution in favour of any public financial institution for securing loan from such institutions for agriculture, construction of residential house, higher studies of children, self employment business or establishment of small scale industries with prior permission in writing by the sub-collector (Government of Odisha, 2010). The new law further provides that no tribal could transfer land to a non-tribal or even to another tribal if he owns less than two acres of irrigated land or less than five acres of un-irrigated land. The law in fact reflects a genuine attempt to narrow down the scope for alienation of tribal land and to extend social justice in the real sense to the tribal communities in the state. By March 2010, 1, 09,769 no of cases involving transaction/ alienation of tribal land to non-tribals had been instituted in the state. Out of these 1, 09,746 no of cases involving land area of 59,017.18 acres have been disposed of (Government of Odisha, 2010). The Panchayat Extension to Scheduled Areas (PESA) Act, 1996 enacted by the Government of India also applicable to the Fifth Scheduled Areas of Odisha.. This Act recognizes the traditional rights of tribals over community resources such as land, water and forests. This Act protects the interests of the tribals to certain extent as it provides that the gramsabha or panchayat at the appropriate level would have to be consulted before the acquisition of land in the scheduled areas (Ambagudia, 2010).

Conclusion

In Odisha a number of legislations have been enacted for protecting the interest of the tribals especially to prevent land alienation, control money lending and bonded labour. The money lending legislations no doubt have restricted the unscrupulous activities of the moneylenders to a certain extent in the state. But studies indicate that they still have considerable hold in the money lending business in the state and continue to exploit the ignorant tribals in clandestine forms. It may be observed here that the NSS 59th Round report on indebtedness of farmer households revealed that in 2002, out of every Rupees 1000 outstanding of farmer households in the state Rupees 148 was sourced from the moneylenders (Reserve Bank of India, 2007). Curiously certain instances have come to the fore in the state in which the land is

found in the name of the tribals but non-tribals who have loaned money to tribals cultivate it (Ambagudia, 2010)). This shows that the tribals are not entirely free from the grips of the money lenders in the state. Further though laws are in operation in Odisha to prevent the transfer of tribal land in tribal areas, land alienation in varying degrees continues in various parts of the state. In fact a survey conducted during 2008-10 in the two tribal dominated districts of Koraput and Rayagada found that among the ST households 21.61 per cent had transferred their land through sale and 46.23 per cent through mortgage (Patnaik & Patnaik, 2011). Moreover the erosion of tribal communal land rights owing to faulty survey and settlement operations, land alienation as a result of displacement of tribals and the encroachment of tribal land by outsiders, loopholes in the laws and lack of awareness among the STs with regard to the protective laws in their favour have contributed to the present plight of the tribals in Odisha especially in making them impoverished and deprived. However solution to the malaise lies not in the policy to make the laws stringent but in the education of the tribals and in their awareness of the provisions of laws.

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