

Development & Tribals

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Tribal: Chotanagpur Tenancy Act

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A tribe is a group of distinct people, dependent on their land for their livelihood, who are largely self-sufficient, and not integrated into the national society. It is perhaps the term most readily understood and used by the general public to describe such communities. Stephen Corry defines tribal people as those who "...have followed ways of life for many generations that are largely self-sufficient, and are clearly different from the mainstream and dominant society". But in context of India it is not exactly true.

Census 2011 pointed out that Adivasi constitutes 8.6 % and in absolute term it is 10.5 crore, Where as in 1991 census they were 6.8 crore. In Jharkhand, West Bengal and boarder adjacent to them, in Bihar mostly tribes named are 'Santals'.

The Constitution of India, Article 366 (25) defines Scheduled Tribes as "such tribes or tribal communities or part of or groups within such tribes or tribal communities as are deemed under Article 342 to the scheduled Tribes (STs) for the purposes of this Constitution". In Article 342, the procedure to be followed for specification of a scheduled tribe is prescribed. Jharkhand is governed under the V Schedule of the Indian Constitution, which applies to states having a dominant tribal population.¹

The Scheduled Tribe groups who were identified as more isolated from the wider community and they have their own a distinctive cultural identity, have been categorized as 'Particularly Vulnerable Tribal Groups' (PTGs) earlier they were named as Primitive Tribal Groups (PTG) in Govt of India records. So far seventy-five tribal communities have been identified as 'particularly vulnerable tribal groups' in different States of India. Jharkhand topped the list of Adivasi land alienation in the country.

in response to the repeated agrarian uprisings that occurred in that area.

Chota Nagpur Tenancy Act popularly known as CNT Act was enacted in the year 1908. This was an Act to amend and consolidate certain amendments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur. The Act came into force on the 11th November, 1908; it was first published in the Calcutta Gazette. It received the assent of the Governor General on the 29th October 1908. The Chota Nagpur Tenancy Act, 1908 prohibits transfer of lands by sale, etc except with the previous sanction of the Deputy Commissioner. It also prohibits the alienation of land of the tribals. It also provides for restoration of alienated land to the tribals or when converted for urban use, to give them equivalent lands. It is an important act for the tribal population of Jharkhand. It restricts transfer of tribal land to non tribals.²

The CNT Act is effective in North Chota Nagpur, South Chota Nagpur and Palamau divisions, including areas under various municipalities and notified area committees.

CNT Act was amended in 1947 for the purposes of urbanization, industrialization and for development projects. This caused huge deprivation of Adivasis from the land. Salient feature is as under.

Community Rights: The record of rights that were created during initial and revisional survey and settlement operations carried out under the CNT Act.

Land Rights of Tenure Holder: "Tenure-holder" means primarily a person who has acquired from the proprietor or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it.

Land Rights of Raiyats: "Raiyat" under Section 6 means primarily a person who has acquired a right to hold land for purposes of cultivating it himself or by members of his family or by hired servants or with the aid of partners and include the successors-in-interest of person who has acquired such a right but does not include a "Mundari Khunt Kattidar."

Provision for Transfer of Rights by Raiyats: Section 46 of the act lays down restriction on the rights of raiyat to transfer

their holding by mortgage or lease for a period exceeding five years, or by sale, gift or any other contract.

Rights of Tenants against Unlawful Ejection or Transfer Section 71 of the act lays down the provision for power to replace in possession tenant unlawfully ejected.

Land Rights of Mundari Khunt Kattidars: Under Section 8, a Mundari Khunt Kattidar means a Mundari who has acquired a right to hold jungle land for purposes of bringing suitable portions thereof under cultivating by himself or by male members of his family.

Land Rights under Bhuinhari Tenures: The various provisions for Bhuinhari tenure has been given in section 48, section 48A and section 49 of the act.

Rights for Korkar Land: According to section 3(xiii) of the Act, korkar means land by whatever name locally known such as babhala khandwat jalsasan or ariat, which has been artificially leveled or embanked primarily for the cultivation of rice.

Conclusion

Instituted by the British, the Chota Nagpur Tenancy Act, 1908 is an important Act for the tribal population of Jharkhand. It restricts transfer of tribal land to non tribals. The CNT Act is effective in North Chota Nagpur, South Chota Nagpur and Palamau divisions, including areas under various municipalities and notified area committees. So far, the CNT Act has been amended as many as 26 times. As it is in the Ninth Schedule of the constitution, judicial review is not permissible. It can only be repealed by the Parliament; the state government can only make amendments to it.

After going through the provisions and analysis given above it becomes clear that the various laws enacted for the tribal and for securing their land to them are quite apt. they are essential for giving the tribal a right over their land and for ensuring that their lands right are not violated. Keeping in view the tribal living which is predominantly forest based, to deprive them of the benefits of forests would be sheer injustice, where most of the people are still living in the forest area and dependent on the forest produce for their living. In such situations, it is important that stringent laws must be there for keeping the rights of the tribal upheld. Every political party has its own say regarding the CNT, the vote bank policy, the appeasement factor all work

cumulatively for these parties in framing their opinion. Varied opinions surrounding the CNT have made the situation worse for the ultimate beneficiaries. And also the fate of CNT remains dwindled. A holistic development of the state and tribals in particular demands a more uniform approach towards the much debated Act, the paramount interest of the tribals should subvert all underlying political differences.

Thus, any demand for amendment to existing laws as far as rights of tribal must not be entertained. Inclusion of section 76 in the Act which reads that local custom will prevail in the absence of any written law of the land further justifies this contention also is be justified through an additional ground that the Act itself provides a scope under section 76 of the Act by which the local customs will prevail in absence of any written law of the land. Thus, keeping in mind all these aspects that the existing laws need firm execution without any amendment for the welfare of the tribal society. But critics often cite some provisions in the Act as acting against the interest of the tribal communities keeping in mind the changing scenario of the society. The banks in the state refrain from offering loans to tribes people due to legal provisions in both the CNT as well SPT banning transfer of immovable assets of a tribal to a non tribal member.

The banks fear the provisions prevent them from auctioning the mortgaged property of a tribal. Recently, at the 50th general meeting of the state level bankers committee, Chief Minister said the government would soon implement the recommendations of the Tribal Advisory Council to ease the CNT and SPT norms. He said even education and housing loans were not being disbursed to tribe's people. The CM said the government would soon create a Corporate Social Responsibility trust in which companies would be asked to deposit 2% of CSR fund share in the trust. The trust will execute the schemes of the government.

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