

**OVERVIEW ON COMMON PROPERTY RIGHT AND
RESOURCES IN TRIBAL JHARKHAND:
AN ANTHROPOLOGICAL STUDY**

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Abstract:

The term “common property right” presupposes the existence of (a) Common property resources and (b) the rights of the community over the common property resource. The research studies of these two elements form the main subject matter of inquiry in this paper.

Common Property Resources (CPRS's) constitute all such resources which are meant for common use of villagers. CPR's include all resources like village pastures and grazing lands, village forest, and wood lets, protected and un classed government, forests, waste land, common threshing grounds, watershed drainage, ponds, tanks, river, rivulets, water resources, canals, and irrigation channels. The resources were largely under the control of the local communities. With the extension of State Control over these resources, resulting the decay of the community management system, CPR's available to the villagers declined over the years. Nevertheless, the CPR's still play an important role in the life and economy of the tribal population. Today, the villagers have a legal right of access only on some specific categories of land and water resources.

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The tribal land of Jharkhand is neither saleable nor transferable to other. The use of land, in the form of collective farming, can be found thorough out the Jharkhand. Forest and sacred grooves are happened to be the common property. Tanks, ponds, water reservoirs, ahar, pynes are the common for bathing, drinking and irrigations. From the forest, minor forest produces, medicinal herbs, fencing and house making materials, woods for agricultural tools, fuel woods and fodder are the objects of common property and of common use; and are procured from the forest collectively. Water from the water reservoirs are used by one and all of the community or the village; and fishing is also common phenomenon. “ Eat together and live together“ is the ethos of tribal life.

INTRODUCTION

On Nov. 15. 2000, Jharkhand separated from Bihar to become, the 28th state of India. The state has an area of 79,714 sq. km. There are 24 districts, 211 blocks and 32620 villages in the state. The state has a high proportion of tribal population, The State has total population of 32 million and population density of 414 per sq. km.

Prior to the arrival of the British in Chota Nagpur, the area was ruled by chiefs of various indigenous groups. The area came under the British in 1765 as part of Bihar. As the British gradually expanded their authority over the plains to the north of present-day Jharkhand during the second half of the 18th century and the beginning of the 19th century, revolts against them occasionally erupted in Chota Nagpur. The most important of these uprisings were the Ho revolt (1820- 27) and the Munda uprising (1831 -32). From the period of British expansion until the turn of the 21st century, the history of Jharkhand overlapped with the history of Bihar.

Many of the villages of the various tribal peoples share some common characteristics. Tribal celebrations that provide occasions for music and dancing include the festival of flowers known as Sarhul, a cattle festival called Sohrai, and a post harvest festival called Mage Parab. In addition to the dance floor, most tribal villages have a sacred grove (*sarna*), where worship is offered by a village priest, and a bachelors' dormitory (*dhumkuria*). The *haat*, or weekly market, plays an important role in the village economy. The natural environment contributes to the cultural life of Jharkhand. These activities are performed collectively by the tribal masses. Collectiveness is character of the tribes in every sphere of their life. Their every belonging is also

collective. The property ownership is collective at least in the land ownership. Therefore, common property right is also collective.

The term “common property right” presupposes the existence of (a) Common property resources and (b) the rights of the community over the common property resource. The research study of these two elements forms the main subject matter of inquiry in this paper.

Objectives:

1. To know the status of common property rights over the common property resources among the tribes of Jharkhand.
2. To document the benefits of Collective ownership among the tribes.
3. To find the reasons for decay of collective ownership on common property resources.

Methodology:

This is an anthropological study , therefore it covers all the anthropological techniques. For data collection researcher used the schedule and which is followed by interview of the tribal informants and intellectuals at the field as well as at the academic level. For secondary data , governmental offices and libraries of different institutes were taken into account. Above all ,the observation and cross verification were done rigorously. Research emphasis was given in the Mundari Khuntkatti area, the Bhuinhari area and Damini-e-Koh.

Discussion:

The term “common property right” presupposes the existence of (a) Common property resources and (b) the rights of the community over the common property resource. The research study of these two elements forms the main subject matter of inquiry in this paper:

The term common property resource has been explained as an “important component of natural resources endowment of the village communities which contribute significantly to the rural

economy and provide sustenance to the local communities in rural areas” as outlined in the Ministry of Panchyati Raj document itself.

The term “community resources” has been used in sub-sections (a) and (d) of section 4 of the PESA and also in chapter xiv of the M.P. Panchayati Raj Adhiniyam.

B.D.Sharma has referred to Article 39 of the Constitution where “material resources of community” has been used (self rule laws of Madhya Pradesh) and yet again Dr. Sharma explains in another booklet named “Tide Turned”- “the community resources naturally comprises the entire habitat including land, water, and forest resources within the area of command of the community on which the concerned people depend for their living”.

T.S.Macpherson’s description of the Mundari Khuntkatti in his report on survey and settlement of Porahat Pargana(1905-07) runs as follows in para-46 the village is still the property of the village community and the zamindar has no right in it. Para-47 the village community that is the members of the original patriarchal family and the person admitted by them to a share in the tract acquired are the corporate owners of the village, with equal voice in the management of the little republic, but exclusive owners of their family holdings.

From what has been cited above it hardly needs any explanation what comprises a village as property. Macpherson has spoken about corporate ownership of a Mundari khuntkatti village as a property which clearly explains the existence of common property resources of the Mundari Khuntkattidars and the persons admitted by them to a share in the village property. Whatever natural property is corporately or collectively held is the real common property resource of the concerned communities.

J.Reid in his book “Chotanagpur Tenancy Act 1908” published in the year 1910 has recorded his observation in the following words, “The members of the brotherhood, the descendants of the original clearers in the male line were (are) the owners of the whole area included within the periphery of the villages in which they or their ancestors settled and they have succeeded in many instances in preserving their ancient rights to the present day”

S.C.Roy in his famous book “Mundas and their country” 1912 (reprinted edition of 1995 at page-70) recorded the common property as below- “the boundaries of the village were laid by

the paterfamilias And within the limits of the boundary line thus demarcated all the land, cultivable as well as waste, all hills, jungles, and streams, everything above ground and underground became the common property of the village family".

In view of what have been cited above our explanation of common property resources means the natural resources of a village at the command or disposal of the village community

Apart from the above there are other aspects of the common property resources that will be dealt with in due course. So far the rights to common property resources of the village or villages are concerned they (communities) are having either full rights or restricted rights depending upon the classes of communities living in a particular village or territory.

As has already been said at the outset of this paper that the term common property right presupposes the existence of (a) common property resources and (b) rights of the community to common property resources

So the report begins with reference to the following three facts outlined in the document of the Ministry of Panchayati Raj –

- (A) That the common property resources cover a wide basket of land, water, vegetation resources consisting of community pastures, village tanks, rivers, rivulets and waste land.
- (B) That the common property resources may be identified by access, common use and communal purposes, they are termed as communities natural resources where every members has access, usage facility with specified obligation without anybody having exclusive property right over them.
- (C) That there is a need to undertake a study at least 50% of in 112 (TSP area) of the state of Jharkhand to identify. The common property resources, catalogue the traditional management systems and the benefits derived by the weaker sections of village communities and suggest ways to their restoration effective management so that they support the sustenance of the rural poor. What has been referred to in the above outlines enjoins a duty, firstly to identify the property that is or may be called **common property resources** and secondly their rights to usage facilities.

IDENTIFICATION AND DESCRIPTION OF COMMON PROPERTY RESOURCES-

(1) Land Resources- These are of two categories in the state of Jharkhand. The first categories of **Land Resources** are corporately owned by a special class of tenants and the other category of Land Resources is what is generally or commonly called **Waste Lands**.

(1A) There are three distinct regions which previously formed large part of South Chotanagpur Division-within which existed erstwhile old Ranchi District, and the erstwhile Singhbhum district. 'One of these distinct regions is locally known as the **Mundari Khuntkatti** region which is mainly located in present, Ranchi, Khunti and, at places in Simdega district and in western parts of present West Singhbhum, officially known as Pargana Porahat, and Chandil block of present Seraikela district.

The sub region having Mundari Khuntakatti lands may also be identified as **No Rent Zone** because the owners and occupier of such tracts paid no rent in the past nor do they pay at the present moment, because they never recognized, nor do they do so, any authority or king to be the masters of lands over them. The tenants of this region are owners and co-owners of such tracts and are designated in land laws as **Mundari Khuntkattidars** who are corporate owners of their respective villages' i.e. khuntkatti hatu (as called by the Mundari khuntkattidars themselves.)

It is to be noted that it is in this region exists till this day **Traditional Management System** which will be explained later in due course.

(1B). The other distinct region is very popularly called **Bhuinhari Patti** where also lands and forests and other natural resources are at the command of Bhuinhardars collectively from ancient times as owners and occupiers of such property. Incidents of such tenures will be described later in proper place. These tenures are in existences in the present districts of Ranchi, Khunti, Simdega, Gumla and Lohardaga. Such of these tenurial regions may be classified as **Fixed Rent Zone** where the last rent settlement was made during the period of 1869-1880. These rents cannot be enhanced as provided in section10 of the CNT Act.

It may also be noted here that neither the Bhuinhari nor the Mundari Khuntkathi. Tenures/ tenancies have vested in the State. It is here in the Bhuinhari sub-region

traditional land resources management is in existence in respect of group or collective ownership or khoont ownership.

(1C). The third distinct region is better known as **Kolhan Government Estate** comprised in the West Singhbhum district. It is in this region where neither zamindars nor neighbouring local Rajas could ever establish themselves. It was only the erstwhile British Force that could subjugate the original inhabitants known as Laraka Hos Only To Some Extent And The British administration made its presence felt with police powers and to decide simple crimes and disputes, through the Ho chiefs known as Mankis and Mundas. Thus the British Government while making records of rights of land resources, khewat NO. I, stood recorded in the name of Secretary of State as symbol of British Authority, khewat NO.II Stood recorded in the names of their PIR Mankis with their official designation and Khewat no.III stood recorded in the names of village Munda. The Secretary of State is now gone and that the erstwhile Kolhan Government Estate too has not vested, the Estate is managed and protected by the Mankis and Mundas as officials of the HO community which is the ultimate owner and occupier of all lands and other natural resources falling within the boundaries of the erstwhile K.G. ESTATE). Waste Land settlements are made by the Mundas with the consultation of the territorial Mankis, for which they have been given record of right – **Hukuknama** duly sealed and signed by the Settlement Officer of State Government in which are recorded the various rights and duties of the resident raiyats, Munda and the Mankis. Thus the land resources along with other natural resources are the common property resources of the Ho community in Kolhan which they use as prescribed by customs and ussages of the Ho society, of course under the general superintendence of the Deputy Commissioner and his aide the Kolhan Superintendent.

(1D). Outside Chotanagpur there are two other distinct territories existing within the erstwhile Santhal Parganas district which are identified here as communities common property resources – the one such territory is known as **Damin-E-Koh** areas which exist in the Dumka, Pakur and Sahebganj districts and the other territory lies on the Rajmahal hills of Sahebganj which is the ancestral home of the Paharia tribes known for their militancy and valour. Damin-i-koh areas are inhabited by the Santhals along with the Paharias. These two territories have their respective traditional land management systems, which have found legal description and recognition in S.P.T Act 1949. In these two territories are found

villageheadmanship known as village Manjhi or Pradhan. It is through these village officials and the Paragnaits and Sardars above them the administration, mainly of revenue is carried out. The owners and occupiers of these territories are both called Jamabandi raiyats, **Mool Raiyats** and other non –jamabandi cultivating raiyats. The Manjhi,ie, Village headman or the village Pradhans collect rents from the raiyats and deposit the Government share of rent through their respective parganaits or sardars. They have also acquired right to settle waste lands with their tribesmen. The erstwhile zamindars failed to establish themselves over them on account of militancy and indomitable power of resistance of the tribals. The Santals and the Paharias have evolved their own land management systems which were duly recorded in various Regulations and in the Santal Pargana Tenancy Act 1949, in which **Mool Raiyats System** is a special feature of the Act.

Section – 41 of the S.P.T Act provides –No vacant holding and no wasteland in a Paharia village within the **Damin-E-Koh** Government Estate shall be settled with person who is not a Paharia. So the vacant holdings and wastelands are common property Resources of the Paharia tribes alone.

Principles to be followed in settling waste land and vacant holdings as provided in section 28 of the S.P.T Act are reproduced below along with comments recorded on them which are available at pages 54-55-

PRINCIPLES TO BE FOLLOWED IN SETTLING WASTE LAND OR VACANT HOLDINGS-

In vacant settlement of waste land or vacant holdings regard shall be had to the following considerations in addition to the principles recorded in the record-of –rights-

- (a) Fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate.
- (b) Any special claim for services rendered to the village community, society or state.
- (c) Contiguity or proximity of the waste land to Jamabandi land of the raiyat.
- (d) Provision for landless labourers who are bona fide permanent residents of the village and are recorded for a dwelling house in the village.

Comments and case-law:

While the preceding provides the power of the village headman or mul raiyat to settle waste land or vacant holdings with deserving raiyats, this section lays down the principles to be followed by the village headman or mul raiyat in making those settlements. The principles enumerated in this section are in addition to the principle recorded in the record-of-rights.

The village headman or mul raiyat, while making settlement, shall bear in mind the requirement of each raiyat so as to make distribution fair and equitable. Accumulation of village land in few hands is the very antithesis of the community life adopted by Santals. Therefore the village headman or mul raiyat has to see that means of production are not concentrated in few hands so as to produce social imbalance. The capacity of the raiyat to reclaim and cultivate the waste land is another important factor which the settling authority will have to consider, settlement of land beyond a raiyat's capacity to reclaim or cultivate it tends to reduce production and it is against the interests of the village community if maximum productions from available lands cannot be obtained. Any special claim for services rendered by the proposed settlee to the village community, society or the state shall also be taken into account. The situation of the waste land or vacant holding and its contiguity and proximity with the land of the Jamabandi raiyat will be an important factor to be taken into consideration. A raiyat whose land falls in the proximity of the waste land shall have preferential claim over other persons. The principle behind this rule is that a raiyat whose land is situated either contiguous or in the immediate vicinity of the waste land shall be in a better position to cultivate and manage it and it will lead to consolidation of holdings. Bona fide permanent residents of the village who are landless labourers will be entitled to consideration for settlement where lands are available for settlement.

In addition to the principles set forth above there are the following village common rights relating to waste land as contained in the record –of-rights.

The village community has joint rights over the waste land of the village. Jamabandi raiyats have a preferential right to the settlement Jamabandi raiyat without the consent of the sub-divisional officer and proprietor. The proprietor or raiyats, if aggrieved by the

action of the headman in settling waste land, may object before the Sub-Divisional Officer, who after due enquiry, may set aside or modify the settlement. No Sal or other reserved tree may be cut down in order to reclaim waste land, without the permission of the proprietor. The proprietor shall not unreasonably refuse such permission. No land recorded as village grazing land, may be brought under cultivation.

Jamabandi raiyats have the right to graze their cattle free of charge on the recorded grazing land and on the village waste land not reserved for forest under section 15, regulation III OF 1872; but with the sanction of the Deputy Commissioner the proprietor or headman may, for a specified period, enclose with an adequate fence a reasonable portion of the village waste land, to promote the growth of forest and during such period grazing will be prohibited within the enclosed area. If the raiyats allow to any other cattle to graze within the village the proprietor will be entitled to cess.

Excluding the five regions described above in the foregoing paragraphs rest of the remaining regions of Jharkhand viz, Palamu, Garhwa, Hazaribagh, Giridih, Bokaro, Dhanbad etc, were under the management of the erstwhile Zamindars who generally made settlements of wastelands(Gairmazrua khas lands) with any person they liked, but there still exist vast waste lands lying here and there to which the resident raiyats, by custom, have preferential claim to take settlement.

It would be proper here to attract the attention to the provisions of fifth schedule, Para 5 which runs like this-

Para 5 (2) Governor may make regulations for the peace and good government of any area in a state which is for the time being a schedule Area-

In particular and without prejudice to the generality of fore going power such regulations may-

- (a) Prohibit or restrict the transfer of land by or among members of Scheduled Tribes in such area,
- (b) Regulate the allotment of land to the members of the Schedule tribes in such area.

Very unfortunately, the provisions cited above remained since 1950 an ornamental provision which adorns only the Constitution of India. The real ground situation is that no Governor of Jharkhand or earlier Bihar, prohibited or restricted the transfer of land by or among members of Scheduled Tribes, further the then Governor of Bihar (1969) acted contrary to the spirit of this provision (above) by relaxing the earlier restrictions on transfer of lands by providing for validating illegal transfers in favour of law breakers and land grabbers in the 3rd provision to sub section 5 of section 20 of the S.P.T Act and second provision to section 71 A of the C.N.T Act 1908 which resulted in large-scale transfer of Adivasi lands greatly in favour of non-tribals. The provisions of law have been brought in the Acts in the year 1969 with the intention of promoting the interests of the non-tribal land grabbers and law breakers against the spirit of the constitutional provisions referred to above.

As to the allotment (settlement) of land to members of the Schedule Tribes to (b) above, this provision of the 5th Schedule to the Constitution remained unimplemented since 1950. It has neither been the concern of any of the Governor of Bihar/Jharkhand nor of the state governments. On the other hand waste lands in and around big cities like Ranchi, Jamshedpur and Dhanbad have been settled with the Industrialists, Entrepreneurs and non-Scheduled Tribes denying and ignoring the constitutional claims of scheduled tribes for preferential treatment in the matter allotment of waste land.

In the face of what has been stated in the previous Paras there is nothing wrong to say that not an ounce or an iota of benefit trickled down from the above constitutional provision on the members of Scheduled tribes, it may also be said that the above provisions of 5th Schedule have remained nothing but a great bluff to the S.Ts by calling it a "Constitution within the Constitution".

Benefits of the constitutional provisions discussed here will reach only when they are truthfully implemented by the President of India. Governor and the Chief Minister of Jharkhand, otherwise no benefit is going to trickle down on the Adivasis.

It should be the concern of the Ministry of Tribal Affairs, Home Ministry and Ministry of Panchayat Raj and Rural Development and the Commission for Scheduled Tribes to see that these provisions are implemented forth with failing which the tribal situation may worsen beyond repair.

A constitutional or legal provision, however beneficial it may appear, will remain a useless document if it is not implemented in its true spirit or implemented wrongly, if it is not implemented, the constitutional provision may amount to a great bluff to the Adavasis and others living in Schedule Areas of India.

Conclusion:

Jharkhand is full of diversities. Diverse people of diverse culture is the Character of Jharkhand .There are several indigenous groups who have made their abode here. In Jharkhand, there are Scheduled Areas too .There are as many as thirty two scheduled tribes each, differing from each other in language, worship, social formation, occupation and ways of lifestyle. The differences are greatly determined by local surrounding, environment of habitat, and past history of their life. The concept of Common Property Resources may not be one and the same thing everywhere. The availability of Common Property Resources is more meaningful for the people of Scheduled Areas than that of the general or non-Scheduled areas where Common Property Resources have dwindled because of various reasons. While greater part of the Scheduled Areas of Jharkhand were beyond the reach of Ex-Zamindars and other commercial communities, the tribals have made use of natural resources for their domestic and agricultural needs subject to customary restrictions and obligations as determined by their ancestors or society. For them custom is the recognised law and above all.

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