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Land Alienation, Unjust Laws and the Tribals – Kerala

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Abstract

The paper sheds light on the importance of land to the Adivasis (indigenous tribal people), the underlying problems that paves way to the land to be alienated from the tribal people, the impact of land alienation and some suggestions to rectify the problem. The Adivasis greatly depend upon their land for their livelihood. So, the alienation from their lands literally means loss of their livelihood. The article examines the ways in which the government acquired tribal land in the name of "national interest. Despite having many laws that protects and safeguards the rights of the Adivasis, still the problem of land alienation is in full swing. The article argues that it is the lack of political will to implement these laws which allows the problem to persist today. It has been observed that even several laws such as the Indian Forest Act has been twisted to transfer the land from the original inhabitants to settlers. The paper concludes by giving out some suggestions to curb the problem of land alienation.

Tribal People and their Symbiotic Relationship with Forest Land

Forests have played a vital role in the socio economic and cultural life of the tribal people of India. Majority of the tribal people have lived in isolation in the forests in harmony, security and trust for a long period of time. They have eventually developed a symbiotic relationship with the forest. Many opined that the forest environment satisfies the deep-rooted tribal traditions and sentiments throughout their life until death. The forests provide the tribals and other communities living close to the forest habitat, shelter, raw materials for household equipment, other objects of material culture like resins, gums and dyes etc. These are some of the direct benefits the tribals and indigenous communities get from the forest. The life and economy of the tribals of India are intimately connected to the forests. Majority of the tribal population in India actually lives inside the forests and make a living out of the forest produce collected by them and also by hunting animals.

An Overview of Land Acquisition in India

Since the consolidation of land, land has been an important part of human life. Land reforms remain very essential for social justice. It has been observed that land consolidation is actually responsible for the highly inequitable society that exists today. After India became republic, zamindaris were abolished and the rural poor were immediately given land rights. India was one of the few nations to do so. Later on, the government further implemented the Land Ceiling Act to provide land to the last person of our society. After 2000, the state started acquiring land in the name of "national interest". This act was done under the support of the colonial law of 1894 land acquisition act. In the past few decades, it is seen that the democratic rights were curtailed and the rural communities lost their livelihoods as the government and big companies continued land grabbing. Millions of acres of land were provided to the greedy Indian as well as international corporate houses, without seeking mandate from the

communities whether they wanted the project or not. This coupled with lack of proper rehabilitation plans for those who lost their lands and livelihood in this act of land grabbing for "national interest" by the state sparked the beginning of huge protests. These protests were successful to an extent that this resulted in the amendment of a new land acquisition Act 2013 (The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013) which made it mandatory to get the consent of the people before land was acquired for any project.

Development is absolutely essential for a country. But it is absolutely necessary to also focus on the people who would be affected by this. The Land Acquisition Act 1894 states that land can be acquired for "public benefits", which encouraged the establishment of Special Economic Zones (SEZ). This resulted in the increased grabbing of cultivable land from farmers as SEZs were supposed to be established in areas having abundant water resources. No proper compensation was given to the owners of the land as well as to the dependents on land such as sharecroppers, agricultural laborers and so on. It is important to note that out of the land acquired for establishing SEZ, only a small portion is used for core activities, while the bulk majority is utilized for services as well as residential complexes which are nonproductive activities. This is greatly for the benefit of the builder and construction lobby. This is the sole reason why the biggest builders in India queue up before the government with proposals for establishing SEZs.

India which is characterized to be having second largest tribal population in the world holds a central position in tribal culture and economy. Even though India has several laws which recognizes tribe's right to land and self-governance such as Fifth Schedule for mainland India and the Sixth Schedule for certain areas of north-east India, it is seen that half of the tribal people do not have land. This is mainly due to a number of shortcomings and problems while implementing these laws.

Land Alienation in Kerala

It has been estimated that about 30 percent of the tribal households in Kerala are landless. Landlessness is least in Travancore and Cochin. The dominant tribes in these three districts, viz, Kanikkar (Thiruvananthapuram) the Mala Arayan (Idukki and Kottayam), Muduvan (Idukki) and the Urali (Idukki and Kottayam) were the first to become settled agriculturists. (Brijoy, 2013) The landless tribals are maximum in the Malabar area with districts of Wayanad and Palakkad having the maximum number of cases. As a result of large scale incoming of non-tribals particularly from the former travancore region, a good portion of the cultivable land which the adivasis had used for shifting cultivation, have been encroached upon depriving them of their only means of subsistence. Extensive tracts of tribal land were usurped by cultivators who emigrated from the plains and consequently, the adivasis were reduced to the position of landless serfs of these Hindu, Christian and Muslim exploiters. The greatest suffering has naturally been inflicted on the Paniya and Adiya tribal communities. In Attapady, the migration of people living in the plains started in the 1950s. But within a span of 25 years, 20 percent of the tribal households in the district have been rendered landless. (Brijoy, 2013) Hydroelectric projects and dams such as those in Idukki, Chimmini and Karapuzha as well wildlife sanctuaries and national parks such as Wayanad sanctuary, Periyar sanctuary, etc. have resulted in a swelling of the numbers of landless tribals.

Underlying Problems That Causes Land Alienation

Land is the main asset of the tribals in Kerala and about 90 percent of them are involved in agriculture and/or allied activities. They are emotionally attached to the land. But, the number of landless tribals has increased over the past few decades and several reasons can be held responsible for this phenomenon. Several tribes largely depend upon non-tribals for meeting their expenses. They are also known to be alienating their lands for meeting the

domestic expenses and clearing off their past debts. The poor economic conditions, debts, their drinking habit, usage of land as a security for taking loans, industrialization, urbanization, and inefficiency of the administration are the primary causes of land alienation and landlessness among tribals. In Kerala, after independence, massive alienation of tribal's land took place primarily due to migration of several people living in the plains, displacement for projects and so on.

Kerala Land Reforms Act, 1963 which had the policy of "land to the tiller" was a major factor that encouraged land alienation. Under this new law, the settler farmers became the owners of the land while the tribals who were the original owners of the land became mere agricultural laborers. The non-tribal communities invaded the areas of Attapady and Wayanad after the amendment of this act and it was seen that their behavior towards the tribals in a ruthless manner. They exploited the tribals in a more heinous way than their former rivals – the British and the landlords. The masters and the government further deepened the issue by focusing on giving land rights to tenants only. It is also important to note that there were instances where, when the tribal people tried to get hold of their land rights, they were crushed as the state unleashed violence on them (Instances of violence in Cheengeri (1995) and Panavalli (1997))

Land Alienation through marital relations can also be observed in some parts. The non-tribals establish a marital relationship with a tribal and keep them as their second wife just for the sake of acquiring their lands. They are not given the status of non-tribal wife. They purchase lands in the name of their tribal wife. Land alienation through adoption of non-tribal children is yet another form of land alienation. The non-tribals persuade the tribals to adopt their children and register land in the name of the adopted children.

Another major factor that promoted land alienation was the rapid technological advancement and the change in economic and political structure. Earlier, the exploitation of the tribal regions were found to be both uneconomical as well as difficult. Now, with the rapid technological advancement recently and the economic and political strength of world capitalism and the rising power of neo colonialism has definitely made the situation favorable for the evasion and extraction of natural resources from the land of the tribal people. (Nithya, 2013) Thus the process of acquiring the land forcefully for capitalist development projects became an increasing phenomenon. As tribal lands are rich in many natural resources, naturally it makes them an attractive site for development projects. Illegal acquisition of land by private sector companies like Suzlon (that erected 31 windmills in Palakkad district) is a classic example. (Nithya, 2013) The twin factor responsible for land alienation are: (a) Economic poverty of the tribals (b) Simplicity and honesty of the tribal people. Illiteracy, unawareness of the forest act, poverty, absence of banking systems in tribal areas are other factors that encourage land alienation.

In the Eleventh Five Year Plan, there is provision for 'Ancestral land, villages, habitations and environs belonging to the tribal people to be made available for various development projects as tribal areas possess 60–70% of the natural resources of the country. The courts have also largely failed to provide any relief in this regard. In a case relating to the restoration of illegally alienated lands to their original tribal owners in the State of Kerala, the Supreme Court has chosen to rely upon a provision in the ILO C169 to arrive at a finding that displacement of tribals for the purpose of 'development' is unavoidable and therefore cannot be held to be in violation of the obligations of the Indian State under the said Convention. (Bijoy, 2010) Later on, the state and non-tribals have deprived the tribals of their access to their lands by appropriating these lands. Most states have enacted legislations restricting/prohibiting the transfer of land from tribals to non-tribals. However, the extent to which these legislations

have been able to ensure that tribal people retain control over their homelands, is a matter of debate. Indeed, the majority of land alienation cases do not reach courts of law due to reasons such as ignorance of the law and procedures, inaccessibility to the court, non-affordability of the cost of litigation, and enormous delays. The small proportion that manages to approach the legal system for the restoration of their lands, after many years will find that even though they had a court victory, they are unable to secure possession of their land due to the superior socio-economic status of the person who has acquired the land. While Courts have been fairly consistent in ensuring that tribals who approach them for restoration of their alienated lands finds relief, they are unable to ensure that possession is restored back to the tribals.

Adivasis and the Unjust Laws: Means to Alienate Lands from Tribals

The tribal communities are important in the sense they are integral to the survival and sustainability of the ecological system. The symbiotic relationship between the two was acknowledged by the rights of the tribal people over the forest produce. But, it is important to note that while consolidating the state forests during colonial period and during independent India, the government did not recognize and record these rights of the tribal people.

Indian Forest Act, 1927

India's forests are governed under the Indian Forest Act of 1927. This forest act was implemented by the British. Before the advent of the British rule in India, the forest-dwellers and other indigenous communities enjoyed freedom to use forest resources for their livelihood. The British realized the commercial value of forests and began to use them to generate revenue. In the process they tried to regulate the rights of the forest dwellers and other indigenous people over forests. The British relied on a legal principle called "res nullius" which means that any property which does not have a legal documented owner can be assumed legally unburdened. (Banerjee. 2007) That is, the act gave sufficient rights to the government to declare any area as

reserved or protected forests. This was followed by a 'forest settlement officer' enquiring into claims of rights. This settlement process was intended to fail as the primary objective of the law is to acquire the land by denying the rights of the communities. In case of a claiming process, the Adivasis's rights were rarely recorded and these communities were unable to access the settlement procedure. Thus, acres of land were declared as reserved forests without actually settling the tribals. Another important thing to be noted is that, about half of the area that the government records held as forests didn't actually had any forest cover. Further, those areas which are in forest cover include Adivasi homelands. Thus, all those lived in these lands (irrespective of the fact whether they are forests or not) became encroachers and trespassers in the eyes of law. Thus, the British appropriated many acres of land in the areas of the country where they ruled directly and then handed over these lands to the forest department they created for this purpose. The tribals had an oral culture of documentation. There was little conception of private property in land among them. Thus, British was highly successful in depriving the tribal people of their ancestral land and in acquiring those lands through the act of 1927. This was considered even worse than the zamindari system which the British imposed on the tribals as this development made the tribal people criminal and bonded labors of the forest department.

Even though the act had some principles of justice embedded in them in the form of appeals and objections, they were concealed in a sense that the illiterate Adivasis were not aware of them. Even after Independence, the Indian government continued this practice and brought large area of land under its purview while the Adivasis were denied the benefits of "rule of law". Thus, it can be stated that while the zamindari system was said to be abolished after independence, the zamindari of the forest department over the forest resources and the Adivasis was extended and it remains the largest landholder in the country.

Land Acquisition Act, 1894:

The British relied on the principle of "eminent domain" which means that the state has the first right on any land that it wish it wishes to use for a "public purpose" and can forcefully acquire it from government agencies or individual owners. The public purpose has not been clearly defined that it has been left out for the state to decide what it is. (Banerjee, 2007) According to the provisions of this Act, compensation is payable only to the legal owner of the land, while the tillers, landless laborers, etc who are dependent on that land tend to be ignored. Even in this act, there have been provisions for objections and appeals and similar to the Indian Forest Act, 1927, these provisions were quite vague that it was almost impossible for the Adivasis to go to the court and challenge their rights. Additionally, the provisions for the procedure of compensation for the acquired land were flawed. The Indian government continued this act even after Independence to acquire land from the tribals for development projects, which may or may not compensate the tribal people for the land.

The British introduced both these laws to make the Industrial revolution in Britain possible by extracting natural resources from India. And, even after Independence, industrialisation in India required natural resources, which made the government continue to exploit the forests and to continue with these two anti-advansi laws.

The Land Acquisition Act 1894 went through many amendments: in 1914, 1919, 1920, 1921, 1923, 1933, 1938, 1951, 1984 and 2007. But even after several amendments, its original nature remained intact. Though several amendments have been brought about in this act from time to time the acquisition procedure remains as it used to be when this law first came into existence. The law gives no voice to the land losers to contest and prevent the land from being grabbed. Once the collector is convinced by the requiring body about the purpose of land acquisition, the proceedings can go unhindered. It is observed that the overriding character of

the LAA 1894 is exploited to avoid the clauses of the alienation laws. (Asif, 1999). Once the procedures of land acquisition are complete, the ownership of the land changes from tribal to government land and the purpose is often seen to be abandoned and the land being used for other private purposes. This civil law is often seen as the most misused civil laws in the country owing to the near absence of transparency in its dealings.

Theoretically, the governor of a state on the advice of the Tribes advisory committee can repeal the Indian Forest Act as well as the Land Acquisition Act. But it is noteworthy that this has never happened since this power of the governor to repeal the act was not a binding provision but was a suggestion which again required the power of the executive to implement them.

The colonial laws have led to the State ownership of nearly 97 percent of India's forest land, which limit people's accessibility to forests. With the loss of forest cover and accelerated deforestation, the socio-economic and ecological impacts on local indigenous communities have become acute. Degradation of the surrounding environment and rigid forest laws has adversely affected food accessibility, livelihood options and quality of life, of local indigenous communities. In real life, such communities have been seriously affected as a result of both degradation of forestland and their reduced accessibility to forest resources on account of strict forest laws.

Land Acquisition Act, 2013

Land Acquisition Act, 1894 governed the process of land acquisition in India until 2013. In the two and a half decades after neoliberal and market reforms were initiated, land acquisitions for public and private purposes have increased drawing criticisms and protests across the country. This forced the government to pass a new land acquisition Act - The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013 (LARR Act, 2013) This Act addressed most of the drawbacks of the 1894 Act. The act also decreed proper compensation, rehabilitation and resettlement of communities whose land was taken for commercial purposes. The introduction of social impact assessment (SIA), sharing of capital gains over the period of the first 10 years with the communities whose land was being acquired, and the measure restriction acquisition to not more than 5% of the land in multi-crop districts and 10% of the land in single-crop districts provided security to the affected communities. (Verma, 2015) The act also stated that acquisition of more than 100 acres in rural areas and 50 acres in urban areas by private negotiation should be carried out through proper administrative channels.

The Act Amended: Now for the benefits of the private sector

The complex measures and the fixing of arbitrary prices for land received criticisms from the industry, big corporate houses, etc. As the pressure on the government increased, the government came up with a LARR Ordinance modifying the LARR Act, 2013 and providing the private sector a major benefit. Widening of the section 40 of the act which includes "urgency clause" which allowed the compulsory acquisition by the government include rural infrastructure, affordable housing, industrial corridors, infrastructure development and housing for the poor. Earlier the urgency clause included only defense and natural calamities. The 2013 Act required "determination of public purpose," "consent clause," and "public hearing" for every kind of land acquisition while the amended ordinance abolished all these. Additionally, 13 new areas which includes atomic energy, railways, electricity, national highways and metro rail which were not there in the 2013 Act were added to the ordinance, and when land was acquired for these purposes, the affected families were to be provided the same compensation and rehabilitation as mentioned in the LARR Act, 2013.

The Lok Sabha, passed a bill on 10 March 2015 to amend the LARR Act, 2013. The bill allowed acquisition of land for private hospitals and private educational institutions which was not included in the Act of 2013. However, the bill was stalled in the Rajya Sabha by the opposition parties as many opined that this would deepen the agrarian crisis. The cabinet has decided to add a provision permitting the states to pass their own laws. The provision will also let states decide whether they want the consent clause and SIA in their laws before acquiring land from farmers. (Verma, 2015) Removal of the consent clause will vest the government authorities and the private companies with unrestricted bargaining powers. It will work against the interests of rural communities. The land will be acquired for private projects like SEZs, tourism, health as a result of the removal of the consent clause. The LAAR Act of 2013 provided a say to the affected families while the amendment of the Act - The LARR Ordinance was a step back. As of now, the government has allowed the states to frame their own laws for the acquisition of land. But the question is whether the consent clauses and the other pro-farmer measures will be included in these laws or not.

The Indian Forest Rights Act 2006

The act was enacted to recognize and safeguard the rights of the forest dwelling communities and to encourage their participation in the management and conservation of the wildlife habitats. (Bhullar, 2008) The provisions of the Act are as follows:

1. Section 3 of the Act provides for the grant of several heritable, inalienable and non-transferable 'forest rights' to the beneficiaries
2. Recognition of occupation of forestland to a maximum of 2.5 hectares per nuclear family of a forest dwelling Scheduled Tribe
3. The Act grants the right of ownership, access to collect, use and dispose of minor forest produce (which includes all non-timber forest produce of plant origin), which has been

traditionally collected within or outside village boundaries, even in protected areas. (Bhullar, 2008)

4. The right to protect, regenerate or conserve or manage any community forest resource which communities have been traditionally protecting and conserving for sustainable use, has the potential to enhance conservation. (Bhullar, 2008)
5. The right to access biodiversity and the community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. (Bhullar, 2008)

The Indian Forest Act: 2006 – A critical Analysis

The Act initially recognized forest dwelling Scheduled Tribes as the sole beneficiaries of the Act while excluding the non-tribal forest dependent population that stayed in or depended on forests for their livelihood (but have not been recognized as forest dwellers). Thus, this exclusion may result in societal conflict between people who have lived and mutually benefiting each other for many years. Thus, many have opined that it is more appropriate to make this distinction between those who live in forests for survival and livelihood means and those who exploit the forests for other commercial means and profit making. The act also raises the question of equity, as certain tribal communities will be declared as a Scheduled Tribes but not in other areas, which will lead to differential treatment in two different states. The Act also posed a problem to some tribal communities who had migrated from their place of origin to other areas for livelihood. The limited scope of the bill proved to be problem for these tribal communities as they could be disentitled from claiming rights to their traditional land they had initially inhabited and practiced cultivation.

The bill was revised to include "other traditional forest dwellers" to the list of beneficiaries. In order to qualify for forest rights under the Act, the 'other traditional forest

dwellers' must prove that they have primarily resided in and depended on the forest or forest lands for bona fide livelihood needs since the year 1930. (Bhullar, 2008) This provision will render the claims of the members of the more vulnerable non-Scheduled Tribes who may have relied on other means for livelihood since 1930 invalid.

The act fails to provide clear information on the nature of valid evidences required for the beneficiaries to claim rights over forest land. The claimants were required to provide proof of residence for a period of about 75 years, which starts from the pre Independence period. It was obvious that, if oral evidence and spot verification were not considered valid evidences for claiming rights, a considerable portion of the genuine claimants of forest lands will be deprived of their claim as the government will have to rely on the colonial records (many people resided on land without having any formal colonial record). It has also been observed that the Gram Sabha may often ask for more than one evidence to validate the claim which often led to the denial of forest rights in many cases.

While the Act has vested the forest dwelling scheduled tribes and other tribes with many forest rights, they may be unable to exercise them because of the restrictive provisions of many other applicable existing laws. Many social activists have pointed out that many provisions of the Act have been drafted without even looking into the adverse effects on conservation in case of their implementation.

Impact of Land Alienation:

Land alienation has given birth to several allied problems among the tribals. They are:

6. Increased poverty among the tribals
7. Decreased the occasion of employment
8. Migration of tribals
9. Exploitation of tribal laborers

10. Exploitation of tribal women
11. Created tension between tribals and non-tribals
12. Increased the distance between the rich and the poor tribals
13. Developed extremism and naxalism in tribal areas
14. Brought law and order problem in tribal areas, directly or indirectly
15. Brought the incidence of beggary and prostitution in the tribal areas.

As a result of the acquiring of tribal land by government for various development purposes and also by the contractors and money lenders for their own benefits, the problem of landlessness in tribal areas have come up. The economy of tribals is mainly subsistence oriented. They are not familiar with the concept of saving as they generally produce perishable things. Exploitation by the non tribals is one important effect of land alienation. The non-tribals and money lenders, who enters the tribal areas tries to exploit the tribal people by purchasing the goods produced by the tribals at a very meagre amount. They further exploit the tribal people by providing loans at very high interest rates.

Mathur¹ (1975) and Kunhaman² (1981) in their studies points out the land alienation and livelihood issues of tribal community in Kerala. Mathur, in his work has pointed out the link between the prevailing indebtedness among the tribal people and the problem of land alienation. The studies by both Mathur and Kunhaman discusses the deteriorating livelihood means of the tribal communities who were primarily dependent upon the forest and land. These studies mention forced dependence on newer livelihood options as one of the prominent impacts of land alienation. This requires the tribal people to have different skill sets. The socio cultural structures which are self-imposed² by past societies and are strengthened by the tribal communities are the impediments to acquiring new skill sets.

An official enquiry conducted by the state government on instructions from the Supreme Court confirmed the existence of bonded labor in Kerala (Brijoy, 2013). They have identified numerous Adivasi girls in bondage, some within the state and some outside. It has been observed that bonded labor was present even in the colonies in which these tribal people were rehabilitated by the government. Some examples are Sugandhagiri Cardamom Project and Vattachira Collective Farm.

Land alienation which results in the loss of livelihood has major implications. With the loss of livelihood of the landless tribals, the intricate relationship among the tribal communities in their specific geographical regions cease to exist or attenuates. Conflict with the settlers (migrant population) increased as the livelihood resources of the original inhabitants were utilized or rather exploited by the state as well as the settlers. Sexual exploitation by the immigrants was another problem, such that the intensity of sexual exploitation is clearly visible through the large number of unwedded mothers at that time.

Laws in the Indian constitution for the welfare of Adivasis:

The constitution of India demands for the reconstruction of the unequal social order through legislative or executive measures by distributive justice through the rule of law. Distributive justice, Article 46 also mentions about removal of economic inequalities and solving the injustice arising from the transactions between unequals in society. And also, Article 39(b) entrusts state the duty to frame its policy towards securing the ownership and control of the material resources of the community. Specifically Article 244 Clause (1) Schedule V makes it mandatory for the state to ensure (Para 5(2) of Schedule V) total prohibition of transfer of immovable property to any person other than to a tribe, for peace and proven good management of a tribal area and to protect possession, right, title and interests of the STs. (Brijoy, 2003) Kerala government unanimously passed the Kerala Scheduled Tribes

(Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 on November 14, 1975 as Act 31 of 1975 after procuring the mandatory assent from the president of India. This act (KST Act 1975) was further included in the Ninth Schedule of the Constitution to ensure that the act itself would not be challenged in any court of law. (Brijoy, 2003). Transfer of lands from tribal to non-tribals was also prohibited from 1982.

Conclusion

The celebrated Kerala model of development has not made much change for the socio-economic life of the marginalized sections of Kerala. Tribals have been largely left out of the gains of the Kerala model of development. In the implementation of land reforms, the legitimate claim of the dalits, the traditional tillers of the soil, to cultivable land was never recognized. Among the few states that have achieved land reforms in India Kerala has been rated very high. However, it is equally true that Kerala did not achieve complete success in land reforms.

Despite government initiatives and developmental projects the existing socio-economic profile of the tribal communities is low compared to the mainstream population. All forms of social exclusion and a high degree of deprivation are the major problems faced by the tribal community in Kerala. These groups have very limited capability to act as strong pressure groups in Kerala politics, because of the poor organizational strength; and bargaining power. Consequent to this, the political bodies seldom take care of their concerns. Therefore the government should take steps to constitute a “Special Land Tribunal” to redress the grievances related to land alienations and Prevention of any further alienation of adivasi lands, ensure that the adivasis have full and complete control over their lands and its produce and various insidious practices of non-adivasis to take control of the land and their produce should be dealt with firmly.

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