

## **Land As An Important Factor In The Governance Of Tribals**

**Sruti Baid**

*(4th Year student, The West Bengal National University of Juridical Sciences, Kolkata, India)*

---

**Abstract:-**Government and tribals have always been at loggerheads with respect to land. During the British era, there was a diminished sense of ownership among tribals since there was no law to protect their ownership title. After independence, our Government aimed at replacing the British policies of exclusion with those of integration. Our Constitution provides for certain provisions which are aimed at safeguarding the interest of the tribals. These provisions ensure that tribals are not deprived of their land ownership titles. This paper seeks to examine the efficacy of some of these provisions as well as other measures undertaken by the legislature and the judiciary for tribal welfare.

**Keywords:** Tribals, Land, Ownership, Title, Welfare

---

### **I. INTRODUCTION**

Common Property Resources particularly land has always been a source of conflict between the Government and the tribals. In traditional tribal communities, property was considered to be common. Private ownership right over land was not recognized. Land was governed by customary or unwritten law. This was not recognized by British who were firm believers of private property and written law. They enacted the Indian Forest Act in 1927. Under this Act, forest was divided into "Reserved" and "Protected" categories. These areas couldn't be used for human occupation, farming or livestock grazing. This led to mass encroachment by the tribals who had been occupying these forests for years. They were then subjected to legal action in the form of eviction, arrests or fines. With the abolition of Zamindari System in 1950, the situation worsened further. There was a diminished sense of ownership among the tribals since there was no law to protect ownership title and to prevent alienation of their land. [1]

After a period of mass protests and social unrest, the Government adopted a system whereby they would grant land ownership title to locals on the basis of how long they had occupied the land. This system increased the importance of Patwaris (the keeper of land records). However the tribals didn't have any way of proving their period of occupancy. As a result this system became corrupt. It vested all the powers in the hands of Patwaris who further exploited the tribals, both socially and economically. [1] Thus, after independence, the framers of our Constitution, aimed at replacing the British policies of "exclusion" and "isolation" with those of "development" and "integration". Our Constitution provides for protective provisions which were enacted to safeguard the interests of the tribes and to ensure that they are not deprived of their land ownership rights. [2] This paper seeks to analyze and examine the efficacy of some of these provisions as well as other measures undertaken by the legislature and the judiciary for tribal welfare.

### **II. MEASURES UNDERTAKEN TO PROTECT LAND OWNERSHIP TITLE OF THE TRIBES**

#### **2.1. Fifth and Sixth Schedule**

Since the tribals live in contiguous zones, an area based approach was adopted for developmental and administrative purposes. The President, after consultation with the State Governments, declared certain areas as "Scheduled Areas" under the Constitution. These areas which are governed through the Fifth and the Sixth Schedule of the Constitution have been designated to protect the interest of tribals with respect to land and other social and economic issues. The provisions of Sixth Schedule extend to the scheduled areas of four North Eastern states (Assam, Meghalaya, Mizoram and Tripura), whereas the other scheduled areas are governed by the Fifth Schedule. [3]

Under the Sixth Schedule, certain tribal areas are administered as autonomous entities. The Autonomous District Council is responsible for the administration of the districts whereas the administration of the regions vests with the Autonomous Regional Council. These councils have been vested with legislative, judicial, executive and financial powers. They function as “mini-parliaments”. The schedule gives them full power to preserve the land of the local tribes and to ensure that the tribes can function in accordance with their customary practices. [3]

The Fifth Schedule provides for a special administrative set up. The tribes have been given autonomy to govern themselves in accordance with their traditions. The provisions under this Schedule require a Tribe Advisory Council (TAC) to be set up at the State level. This Council can be set up even in those states which do not have scheduled areas but have scheduled tribes. TAC has not more than twenty members, of which three fourth are representatives of Scheduled Tribes in the State Legislative Assembly. The role of the TAC is to advise the State Government on any matter involving development and welfare of tribes in that particular State. [3]

Sweeping powers have been vested in the Governor by the Fifth Schedule. The Governor is empowered to make rules and regulations to ensure peace and good governance of any scheduled area in that State, to put prohibitions or restrictions on transfer of land from tribals to non-tribals and to adopt measures in order to prevent economic and social exploitation of tribals. Since the Constitution confers autonomy on these scheduled areas, the Governor, after holding a consultation with the TAC, may ask the President to repeal any Central or State law in that particular scheduled area. [3]

## **2.2. Panchayats (Extension to Scheduled Areas) Act, (PESA) 1996**

In order to protect the interests of the tribes, the legislature also enacted the Panchayat (Extension to the Scheduled Areas) Act in 1996 (or simply the PESA). The objective behind enactment of PESA was to prevent the exploitation of tribes by making Gram Sabha the center of self-governance. It is a very progressive legislation which recognizes the rights of the indigenous tribal communities over natural resources including land. The Gram Sabha is required to be involved in all matters pertaining to approval of developmental projects, acquisition of land belonging to the tribals, rehabilitation of the displaced tribals as well as management of other natural resources. [3]

S. 4m(iii) casts a duty on the State legislature to ensure that the Panchayats at the appropriate level and the Gram Sabha are empowered to put a restriction on the alienation of tribal land and to adopt measures to restore any unlawfully alienated land, back to the Scheduled Tribes. The Gram Sabha can restrain intrusions by the State which it enjoys due to the principle of Eminent Domain. Gram Sabha needs to be consulted before any land belonging to the Tribal is acquired for developmental purposes and before a resettlement and rehabilitation scheme for the affected people is floated. However, the word used is “consultation” and not “consent”. So if after consultation, the Gram Sabha or the Panchayat, does not give approval to the proposed project, what recourse is available to the State is not very clear. As recommended by the Bhuria Committee, PESA should be amended so as to require prior approval of the Gram Sabha before a developmental activity is undertaken and not mere consultation. [4]

## **2.3. Samatha v. State of Andhra Pradesh**

An attempt was made by the Supreme Court to protect the land ownership title of the tribes in the case of *Samatha v State of Andhra Pradesh*. [5] *Samatha* was a social action and an advocacy group which was working for tribal rights. In the early 1900s they got involved in a local dispute pertaining to lease of tribal lands to private mining industries. The tribals wanted to retain their land instead of working as labour force in the mines on their own lands. They lost the initial battle in Andhra Pradesh High Court. After that they filed a Special Leave Petition before the Supreme Court. Four years of legal battle was ensued. This was followed by a historic judgement by the Supreme Court in July 1997 in favour of tribal rights. It held that mining activities would be permitted only if carried out by the Government, or instrumentality of State, or tribal cooperative society. It went on to define instrumentality of State as an organization which is either completely owned by the Government or in which the Government has the majority shareholding. Hence, the lease of tribal lands granted by the State Government in fifth schedule areas, to private mining industries was rendered illegal, null and void. The Court asked the State Government to stop the private industries to continue with their mining operations. Moreover, mining activities could be undertaken by the Government, State Mineral Development Corporation and tribal cooperatives only if they comply with the Forest Conservation Act and the Environment Protection Act. These Corporations were directed to set aside 20% of their net profits to set up basic facilities in the fields

of health, medicine, education and roads if the land of the tribals were taken away for developmental activities. They relied on 73<sup>rd</sup> Amendment and PESA to hold that the Gram Sabha was empowered to prevent alienation of tribal lands in Scheduled Areas and to restore unlawfully alienated land back to the tribals. The Court further held that in case certain State Legislatures did not prohibit alienation of land in Scheduled Areas, committee of Secretaries and State Cabinet Sub-Committees were required to be constituted in those states. Decision regarding transfer of tribal lands could be taken only after consulting these committees. The State Government was also required to consult the Central Government, before granting any lease. In such a case, the Central Government would be required to set up a sub-committee consisting of the Prime Minister, Union Minister for Welfare, Union Minister for Environment so as to ensure that the State's policy is consistent with the National policy. It would also be open to the appropriate legislature to formulate policies or bring about a suitable enactment in light of this judgement so as to ensure that there is a consistent scheme throughout the country with respect to tribal lands. [5] The Supreme Court dismissed subsequent appeals by the Andhra Pradesh Government and the Central Government.

### **III. EFFICACY OF THESE MEASURES**

As seen in the previous section, several measures have been adopted to prevent the exploitation of tribals. But these measures haven't been implemented effectively, thereby leading to further marginalization of tribals. As said by Ramachandra Guha, *"they find themselves sandwiched between the Maoists on one side who can't give up their armed struggle and the government on the other that cannot put the interests of a vulnerable minority-the adivasis-ahead of those with more money and political party."* [6] Several attempts have been made to bypass the Samatha Judgement. Similarly, there has been reluctance on the part of most State Governments to implement PESA. Moreover, certain bills have been tabled which go against the spirit of Fifth Schedule and PESA.

#### **3.1. Attempt to Subvert the Samatha Judgement**

This judgement put an end to the unbridled commercial interests of the private mining industries. These powerful corporate houses joined hands with political parties to subvert this verdict. Needless to say, this judgement along with PESA, posed a major hurdle in their "development plans". Even though the Central and State Government's appeal for modification in the order was dismissed by the Supreme Court, the efforts to nullify the order continued. There have been proposals to amend the fifth schedule so as to remove the legal basis for this judgement. These proposals have been floated, despite the fact that the Supreme Court has not imposed a blanket ban on mining. These powerful corporate lobbies will be successful in convincing the legislature and the executive to shirk their responsibilities towards the tribals in order espouse their commercial interest. [7] In the modern era of globalization, liberalization and privatization, the focus has shifted from the Government and communities to private players and market forces. Laws and Policies don't aim at ensuring social justice or welfare anymore. Their objective is to maximize exploitation of resources and to maximize profits. These powerful trans-national corporate houses and private players have exerted their influence over the Government, thereby making it weak and corrupt. There is an attempt to play around with the provisions of the Constitution and this judgement in order to shift the ownership of land and other natural resources from the traditional tribals to these corporate houses. [8]

#### **3.2. Non-Implementation of PESA and the Pressure on the Fifth Schedule**

Most State Governments have been reluctant to make laws and rules which confirm to the spirit of the Fifth Schedule and PESA. Due to weak political will, the provisions of PESA sound appealing only on paper. Bureaucrats have continued to work as usual, without making any effort to ensure that the lands of tribal are not alienated to non-tribals. Moreover since the Act requires consultation with the Gram Sabha and not their consent, tribals have been losing land to powerful non-tribals for years and the alienation is still continuing. In 2001, these tribal communities who constituted 8.6% of India's population accounted for 55.1% of the total displaced population. As per the report released by Ministry of Tribal Affairs, nearly 85 lakh tribals were displaced, after falling victims to developmental activities. [9] Their biggest misfortune is that they inhabit land which is extremely rich in minerals, water and other resources. These resources are required by the State and Corporate houses for carrying out activities aimed at developing the Country. These projects, however, do not confer any direct benefits on the tribes. On the contrary, these activities deprive them of their lands and leave them without any means of subsistence. The compensation and the monetary benefit that they get in return do not really count,

given that their entire lifestyle has been altered irreparably. Uprooted from their traditional habitat and familiar surroundings, they are left to work as unskilled labour in order to survive in some alien and hostile societal set up. It is really disheartening to see that the tribals are being denied their “the freedom to live in their own traditional ways” by those who claim to have a sound understanding of the Constitution. [10]

Moreover, the Government and forest officials have developed some creative arguments to ensure that the tribals do not get ownership of land and other resources. For instance, the officials argue that the power of Gram Sabha should only extend to land and forests which are located within the boundaries of the village. However, in reality, most of the forests and lands which been designated as Scheduled Areas do not really fall within the boundaries of the village. The spirit of PESA is to allow ownership over land and resources which are located in the vicinity of the village as well. [2] Another argument, put forth by the officials, against tribal ownership of land and produce from forest is that it will cause destruction of forests. Hence, the ownership of produce should just mean revenue earned from selling the produce after deducting the administrative expenses incurred by the Forest Department. This goes against empirical evidence which shows that the traditional forest dwellers are in the best position to look after the well-being of forests along with its biodiversity. This evidence is based on both national and international experience of forest control by these traditional tribal communities. [10]

Another threat to the land ownership title of the tribes is the constant pressure on the Parliament to amend the Fifth Schedule. The Fifth Schedule, in its present form, prohibits the transfer of land from tribals to non-tribals. A lot of effort is being made by the Central and the State Governments to amend the Fifth Schedule and the corresponding state laws so as to transfer the ownership of land from the tribals to private players and powerful corporate houses. Contrary to the provisions of the Fifth Schedule, private mining has been taking place in scheduled areas of nine states, particularly in Orissa, MP, Jharkhand and Chhattisgarh. Even the Land Acquisition Act has been drafted in favour of the Government. The Government is empowered to acquire land for “public purpose”. “Public purpose” has been given a very broad definition in the Land Acquisition (Amendment) Bill, covering a wide variety of projects. The Government often enters into a contract with powerful corporate lobbies and becomes the surrogate acquirer of tribal lands. As a result, a lot more tribal land is being acquired under the garb of being used for public purpose, than what is required for these activities. [10]

### **3.3. Tribal Communities not protected against Migrant Domination**

Another issue which has not been dealt with effectively is protection of tribal communities against domination by the migrants. Over the years it has been seen that the indigenous population of Manipur, Tripura, Assam and Sikkim have become extremely vulnerable at the hands of the non-indigenous communities. As said by Tseten T. Bhuta of Sikkim, tribals are becoming “refugees” in their own land but are unable to raise their voice. If they do so, they are termed as “anti-national” and “communal”. [11] In 2011, the Manipur census showed that the migrant population had increased by almost 400% since 1948. Worried over this tremendous increase, many civil societies and indigenous communities launched non-violent protests for protection of their rights. [11] They feared that like Tripura (where the indigenous population has been reduced to 30%), even they would be “swamped” by non-tribals and outsiders and would be displaced from their own land. They said that all citizens could settle and work in Manipur as long as only the locals were allowed to own land. There was a demand to introduce the Inner Line Permit System so as to curb the influx of migrants. [12] This system would make it mandatory for non-manipuris to obtain permission from the Central Government before entering the State. [13]

The Manipur Assembly adopted a resolution in 2012 to implement the Inner Line Permit System. The Chief Minister, Okram Ibobi Singh wrote a letter to the Central Government to that effect. The Home Minister, however, rejected the request to implement the system in Manipur. This led to further protests. [12] After the death of a 16 year old student in a protest rally in July 2015, there was a complete lock-down in the State. In order to adhere to the demands of the people, the assembly unanimously passed The Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015, The Protection of Manipur People’s Bill, 2015 along with the Manipur Shops and Establishments (Second Amendment) Bill, 2015 on 31<sup>st</sup> August 2015. These bills await the consent of the Governor. [12] The content of these bills and how far will they be successful in achieving the desired objectives has been discussed in the next section.

## **IV. MANIPUR ASSEMBLY’S ATTEMPT TO PROTECT THE INDIGENOUS POPULATION**

#### **4.1. The Protection of Manipur People's Bill, 2015**

While introducing this bill in the Assembly, the Chief Minister said that, before Manipur was merged into India in 1949, the entry into the State was regulated by a permit system. This system was abolished in 1950, after which there has been no restriction on the entry of citizens. This has led to an increase in the population of migrants, thereby causing panic among the local indigenous communities. Thus, there is a need to impose reasonable restrictions in order to regulate the stay of non-Manipur people. [14] The bill provides for the establishment of "Directorate of Registration of Non Manipur persons and tenants consisting of a Director and as many officers and staff as may be necessary", by the State Government. [15] Every Non Manipur citizen is now required to register himself with the registration authority appointed by the State. [16] If the registration authority is satisfied that the applicant is a bonafide citizen of India, he shall issue a pass to him stating his place of origin and the duration of the stay. Such a pass can be issued for a period of six months subject to extension of stay by the director. In case of non-issuance of a pass, the applicant can seek redressal from the Director. In order to enable him to approach the director, a temporary pass may be issued to him. [17] The registration authority is required to maintain a register of all such passes issued to non-locals and is required to submit a report to the Director. [18]

A local, who lets out his accommodation to Non Manipur people, are also required to maintain a register containing the name and the particulars of the tenant. He is supposed to submit the particulars of such entries to the Director every fortnight [19] or else he will be subjected to a fine of minimum Rs, 2000 but not exceeding Rs, 5000. [20] The director will then enter the particulars of the tenants in his register and will issue a receipt to the owner stating that he has duly registered the tenant. [21]

Manipur now has a bill to regulate migrants. However, one issue still remains- the cut off year for identifying the Non Manipur people. The bill defines Manipuris as "whose names are in the National Register of Citizens, 1951, the Census Report of 1951, Village Directory of 1951 and their descendants who have contributed to the collective social, cultural and economic life of Manipur". [22] The migration debate revolves around influx of Bangladeshis, Nepalis and people from Bihar who have been dominating electoral politics in Jiribam and Kangpokpi districts in Manipur. Such migrants are excluded from the definition of the "original Manipuri" category. However, the district of Churachandpur has seen influx of migrants over several decades. [23] These migrants, who have caused a demographic imbalance, arrived before the cut-off year. This poses a major hurdle in the achievement of the objective of the Bill.

#### **4.2. The Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015**

The Statement of Objects of the Bill states that as per the 2011 Census, the population of Manipur has reached 28.5 lakh. The 4 (four) valley Districts have a population density of 730 while the 5 (five) valley Districts where there is a restriction on purchase of land by non-Scheduled tribes have a density of 61 only. As a result there is tremendous pressure on land especially in the 4(four) Valley Districts of Manipur. The general people of Manipur fear that in the absence of regulation on sale of land many families in the near future may not have a roof over their heads. Therefore there is an urgent need to regulate the sale of land to non-Manipur persons and hence the Bill. [24]

As per the provisions of the Amendment Bill, if any Non Manipur person, firm, institution or any other similar entity desires to purchase any land in Manipur, he/it is required to submit an application to the Deputy Commissioner of the District in which the land is located, for obtaining the approval of the State Government. [25] The application has to contain the details of the seller, the land which is sought to be purchased, the intended use of the land and other such particulars as may be prescribed. [26] After receiving the application, the Deputy Commissioner shall seek recommendations from the Local Body, Local Authority or Local Self Government and shall conduct an inquiry. He shall then submit the application and the inquiry report to the State Government. [27] The State Government shall then process the matter for passing the final decision. It can give consent only after obtaining the approval of the State Cabinet. [28]

Soon after the passing of the bill, a rumour spread that the Bill is to "snatch away tribal lands" and violence broke out in Churachandpur District of Manipur. Houses of the members of the Legislative Assembly and Parliamentarians were burnt leading to the death of eight people. However the government of Manipur clarified that this was not the case. [11]

A statement was issued on 1<sup>st</sup> September, 2015 after an emergency Cabinet Meeting, that “3(three) Bills do not infringe on the existing rights of tribal communities in Manipur. The present amendment of the Manipur Land Revenue and Land Reforms Act which was passed in the Assembly does not extend to Hill Areas and in no way it will affect or alter the present status of tribal land.” [11]

The Manipur Government needs to find out why the tribal communities of the hills are objecting to the bills and pass amendments accordingly. It needs to hold consultations with the local authorities because they are in the most suitable position to ascertain what is in the best interest of the indigenous communities.

## V. CONCLUSION

The author would like to conclude by suggesting a few policies which can be adopted to ensure that the tribals retain their land ownership title. The process of acquiring tribal land should be made more rigorous. This would require an amendment to both PESA as well the Land Acquisition Act. PESA needs to be amended so as to ensure that the consent of Gram Sabha is obtained before alienation of land takes place. The definition of “public purpose” under the Land Acquisition Act needs to be narrowed down. Provisions should also be introduced which require the person carrying out developmental projects, to justify the minimum total extent of the land required for the activity. Public hearings should be conducted before alienation of tribal land is approved by the concerned authorities. The approval should be governed by the considerations of least displacement, which should also inform the determination of public purpose.

In case alienation does take place, safeguards should be introduced to minimize the monetary burden and other hardships on tribes. The entire process of alienation should be completed within five years and some advance payment should also be made. In case there is a delay in payment of compensation, a penal interest of a high rate should also be paid in addition to the existing 15% interest rate. If there is a delay beyond a period of five years, there should be payment of a new award in accordance with the prevailing market rates. Moreover, a standard rehabilitation process needs to be developed, so as to make it easier for the displaced communities to survive and work in a hostile and alien societal set up. Since the monetary compensation will last only for a few years, the tribals should be provided with agricultural land in their new areas. This will ensure that they have adequate means of subsistence. These policies will go a long way in ensuring that the interests of tribal communities are well looked after.

## REFERENCES

- [1] M Chaturvedi, 'Securing Land Rights for India's Tribes'
- [2] CR Bijoy, 'Policy brief on Panchayat Raj (Extension to Scheduled Areas) Act of 1996'
- [3] GoodPal, 'Tribal People in India: Scheduled Tribes, Scheduled Areas and Tribal Self-Rule'
- [4] MA Kumar, 'Decentralised Governance in Tribal India: Negotiating Space between the State, Community and Civil Society' (Cambridge Scholars Publishing)
- [5] AIR 1997 SC 3297
- [6] Ramachandra Guha
- [7] 'Attempts to subvert 'Samatha' judgement' (PUCL Report 2001)
- [8] GoodPal, 'The Samatha Judgment and the Fifth Schedule of the Constitution'
- [9] K Halawath, 'Human Rights and Realities of Tribals' Lives in India: A Perfect Storm'(IOSR-JHSS)
- [10] GoodPal, 'Non-Implementation of The PESA Act-Government wants Paisa not Pesa'
- [11] B Nepam, 'Manipur violence: Why the protest and what are the demands'(Indian Express)
- [12] P Phanjoubam, 'Violence In Manipur Has Much to Do With Shrinking Space and Economic Opportunities'(The Wire)
- [13] I Laithangbam, 'Inner Line Permit: Protests continue to rock Manipur' (The Hindu)
- [14] The Protection of Manipur People's Bill 2015, Statement of Objects and Reasons
- [15] S. 3(1) of The Protection of Manipur People's Bill 2015
- [16] S. 4(1)of The Protection of Manipur People's Bill 2015
- [17] S. 4(4)of The Protection of Manipur People's Bill 2015
- [18] S. 4(5)of The Protection of Manipur People's Bill 2015
- [19] S. 6of The Protection of Manipur People's Bill 2015
- [20] S. 7of The Protection of Manipur People's Bill 2015
- [21] S. 6of The Protection of Manipur People's Bill 2015
- [22] S. 2(b)of The Protection of Manipur People's Bill 2015
- [23] I Arun, 'Manipur now has a bill to regulate migrants. Why is it still burning?' (Catch News)

- [24] The Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015, Statement of Objects and Reasons
- [25] S. 14A (1) of the Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015
- [26] S. 14A (2) of the Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015
- [27] S. 14A (4) of the Manipur Land Revenue and Land Reforms (Seventh Amendment) Bill 2015