

Situating the tribal and gender connections in Orissa's Land Reforms Initiatives

Access to land is of fundamental importance in rural India. It remains the principal determinant of rural income distribution, although the direction of causality in this relationship is not clear. The weight of international evidence now strongly endorses a strategy for rural economic growth that is based on small yet economically viable, family-run farms. In the Indian context, in which a large and rising share of the rural poor derive livelihoods principally from their own labour, especially in tribal areas a powerful case can be made in favor of more equitable land distribution on grounds that such a strategy would generate more employment than alternatives. In sum, with the overall objectives in mind of reducing poverty, raising agricultural productivity, and promoting social inclusion, there are strong arguments for seeking ways to improve access to land for the poor and other socially excluded groups in rural India. Conventional approaches to improving access to land for the rural poor, both in India and elsewhere, have focused on land and agrarian reform. But the state-imposed, redistributive land reforms are believed to have been unsuccessful in the Indian context, of course, with notable exceptions. However, land reform is perceived by some to be rising up the political agenda once again in many states of India. Since the Ninth Five-Year Plan (1997-2002) the Department of Rural Development, Government of India has been focusing on land reforms with new strategies to benefit socially excluded groups. What is needed at present is an alternative, more focused and more pragmatic course of land reform programme that effectively addresses to the critical omissions and commissions noticed in the erstwhile efforts at national level and in States. Orissa provides a typical case, where the land reform campaign at Governmental level was initiated with great gusto soon after independence starting with Estate Abolition Act, 1952 and at the same time where its failure has been equally conspicuous even admitted by officialdom. It would be therefore worthwhile to take an overview of Orissa's past experience in land reforms before we think of what needs to be done ahead.

ORISSA - A BRIEF REVENUE PROFILE

Orissa became a separate state in 1936 after its separation from the province of Bihar and Orissa, which was itself separated from the province of Bengal in 1912. On its formation in 1936, the state of Orissa comprised six districts: Cuttack, Puri, Balasore, Sambalpur, Ganjam and Koraput. By 1949, the 24 princely states were also integrated with the State of Orissa, which then comprised 13 districts: Cuttack, Puri, Balasore, Ganjam, Koraput, Sambalpur, Dhenkanal, Sundargarh, Keonjhar, Balangirpatna, Boudh-Khonmandal, Mayurbhanj, and Kalahandi. These 13 districts are now commonly referred to as the 'undivided districts'. In 1973, a Committee was established to consider the question of district/subdivision re-organisation in Orissa. No decision was taken on the recommendations of the Committee until 1990, apart from the renaming of Boudh-Khondmals district as Phulbani in 1986. In 1992, four new districts were declared (Gajapati, Malkangiri, Nowarangpur, Rayagada), followed by 10 more in 1993 (Khurda, Nayagarh, Sonapur, Bargarh, Kendrapara, Jagatsinghpur, Jajpur, Nuapara, Angul, and Bhadrak), and a further three in 1994 (Jharsuguda, Deogarh, and Boudh), bringing the total number of districts in Orissa to 30.

On the basis of its physical features and agro-climatic conditions, Orissa can be divided roughly into four zones, such as:

1. The coastal plains of Balasore, Cuttack, Puri and a part of Ganjam, that make up the 18 percent of Orissa's geographical spread;
2. The eastern Ghat region includes the erstwhile Kalahandi, Phulbani, and Ganjam and Koraput districts occupying about 36 percent of the State's territory;
3. The central river basin encompassing Bolangir, Sambalpur and Dhenkanal districts, which cover 23 percent of Orissa's landmass; and
4. The northern plateau covering the districts of Mayurbhanj, Keonjhar, Sundargarh and part of Dhenkanal district, constituting 23 percent of the State's total geographical area,

Of these 4 zones, the coastal plains is the most agriculturally advanced one in the state as a result of high soil fertility and greater availability of irrigation and above all higher State patronage. Coincidentally, Orissa prior to Independence had in place 4 distinct land revenue systems, that roughly corresponded to the above mentioned geo-climatic zones and each of these systems had evolved to its latest position through centuries of innovation and experiments made in successive Moghul, Marhatta and British regimes. As is well known, it is the British who provided a systematic and codified shape to each of these revenue systems just as they did in other spheres of statecraft. **First**, Bengal revenue system covered northern part of the state, comprising the undivided districts of Cuttack, Puri, and Baleswar (but excluding the princely states merged in these districts). In these areas, the Bengal Rent Act 1859 was the first legislative attempt to regulate tenancy, which got subsequently replaced by Bengal Tenancy Act 1885. After 1913, the Orissa Tenancy Act was modelled more or less on the Bengal Tenancy Act. Many intermediary forms of tenure developed afterwards in these zamindari areas, and an increase in share-cropping is suggested to date from this period. **Second**, Madras revenue system extended over southern part of the state comprising the undivided districts of Ganjam, Koraput, and Baliguda subdivision of Boudhkhondmal (now Phulbani) district (i.e. Oriya-speaking areas of the Madras Presidency). Here the first attempt at tenancy legislation was the Madras Estates Land Act 1908, which applied to the zamindari areas of Madras Presidency. There were also ryotwari areas under the state government where the rights of landholders were governed not by law but by executive instructions contained in the Standing Orders of Board of Revenue that had the force of law. As in zamindari areas, landholders (ryots) could freely sublet to tenants who had no protection under the law. **Third**, Central Province system prevailed across western part of state, comprising the undivided districts of Sambalpur and Nawapada (i.e. the Oriya-speaking areas of former Central Provinces). In these areas the Central Province Land Revenue Acts 1881 and 1917 and the Central Province Tenancy Acts 1898 and 1920 governed land revenue and tenancy. **Fourth**, the Princely states which were then considered as partially excluded areas had separate land settlement/ revenue regulations under the Government of India Act 1935. There were no written laws designed to protect the interests of tenants in most of the princely states. The Orissa States Order 1948 conferred occupancy rights on tenants, but no rights were recognized for any tenants below occupancy tenants in the hierarchy of rights in land. (*Source: Behuria, N.C., 1997, Land Reforms Legislation in India, Vikas, New Delhi*)

Main systems of land revenue administration in Orissa prior to Independence:

As is well known, during the British rule Orissa like other parts of the country had two systems of revenue collection, one called Zamindari or Garjati System and the other Ryotwari or Moghul Bandi system. A brief description of each is given below.

1- Zamindari (or landlord) tenure: land was held as an independent property and revenue was assessed on an individual, or a community, owning an estate as a landlord. Proprietors were required to deposit land revenue at the district treasury. One sub-divisional officer, assisted by one or more tehsildars, was incharge of revenue collection. There was no revenue administration below the district level, and the *zamindars* organised their own revenue collection agencies, often involving many more layers of intermediaries.

2- Ryotwari (or peasant proprietary) tenure: land belonged to the Crown and was held in a right of occupancy (which was both heritable and transferable) by individuals. Revenue was assessed on individuals who were the actual occupants of smaller holdings. It was collected through the village headman whose office was hereditary. He was paid a commission (10 percent) and sometimes received some *jagir* lands. In addition to collection of land revenue, he was also required to keep the records-of-rights up-to-date by carrying out mutations.

Under either system, there were numerous rent-paying sub-tenants. There was also considerable variation in the quality of land records management between the two systems. There was a village accountant in ryotwari areas, but no such position in zamindari areas. As a result, land records were better maintained in the former and almost non-existent in the latter. These differences could create real problems during land litigation since in absence of properly maintained records it would be very difficult to establish the facts about the competing claims.

While the present system of land record management owes its origin to Todarmal, it was mainly developed under British rule in the 19th century. The colonial administration relied almost entirely on revenue from land and so an efficient land records system was essential to its survival. However, regular updating of land records was rare. In zamindari areas, the intermediaries were only interested in collecting rent. For this part-time rent collectors (e.g. *guntia* in Orissa) were hired and there was no systematic system for land records management. Most of the updating occurred during periodic settlement operations. A large proportion of Orissa's land area fell under *zamindari* tenure and so for all practical purposes, Orissa was a 'non-land record state'. The need to improve and strengthen land revenue administration has long been recognised. As early as 1958, the poor state of land records was identified as one of the important causes of the failure of land reforms (*Report of the Committee on the Panel of Land Reforms , Planning Commission, Government of India, New Delhi, 1958*).

ERA OF LAND REFORMS

Land legislation in India in the immediate aftermath of Independence sought to reform the exploitative and iniquitous system inherited from the British, and was motivated by the central concern to provide 'land to the tiller'. Accordingly, the following principles constituted the major drivers that pushed forward the land reform campaign across the country including Orissa in the post-independence period:

- **Abolition of intermediaries**
- **Conferment of ownership on tenants.**
- **Providing security of tenure**
- **Regulation of rent.**
- **Fixation of a ceiling on land holdings to prevent excessive concentration of land.**
- **Special provisions for Protection of rights of ST and SC communities**

While there was a national consensus on these objectives, land was classified as a state subject in the Constitution and the federal states were free to legislate taking into account the locale specific conditions. In the context of Orissa we find that following laws, which were inter-related and inter-dependent in one way or another were enacted successively in order to establish the legal framework for the new wave of land reforms.

- **Estate Abolition Act, 1951-** The first of its kind in the series of post-independence land reform measures in Orissa, it aimed at abolition of intermediaries and vesting of all land rights in the state while allowing agrarian land of less than 33 acres to remain with intermediaries for personal cultivation.

- **Land Reforms Act, 1960 (Amended in 1965, '70, '73, '74, '76, '90, '91 and '92)** –It aimed at granting permanent, heritable and transferable rights in land for tillers; ban on leasing land except under special conditions; title to land in continuous cultivation for 12 years or more by a person other than the owner to pass on to the cultivator; rent not to exceed one fourth of gross produce; ceiling on individual holding reduced to 20 acres in '65 and 10 acres in '72. Its Section 22 declares that any transfer of land belonging to STs / SCs to people not belonging to STs/SCs without the prior permission of the competent authority is declared void. Sections 23 and 23A of OLR Act provide for restoration of land of SCs & STs to the respective recorded tenant, if it has been transferred without prior written permission of the competent authority or if the land has been under unauthorised occupation by non-SC and non-ST persons.

- **Survey and Settlement Act, 1958** – It aimed at consolidating and amending the laws relating to survey record-of-rights and settlement operations in the State of Orissa.

- **The Orissa Money Lenders Act, 1939 modified upto 31st Oct. 1979-** Though apparently not connected to the land reforms as such, the Act and its subsequent series of modifications were enacted avowedly to address to the state of increasing landlessness and associated impoverishment and destitution among the vulnerable social classes, especially the tribal communities resulting from the rapacious exploitation by both unregistered and registered money-lenders.

- **The Orissa Government Land Settlement Act, 1962-** It aimed at enacting a general legislation for formulating a set of uniform principles regarding lease of Government waste lands over-riding provisions of various Acts, Rules, Orders, customary practices and usage in force in various parts of the State with the primary objective of governing the settlement of waste lands in a planned manner uniformly throughout the State. The Section-2 of the Act stipulated inter alia that seventy per centum of the Government waste land shall be settled with the persons belonging to the Scheduled Tribes and the Scheduled Castes in proportion to their respective populations in the village in which the land are situated and the remaining lands shall be settled with the other persons not belonging to the aforesaid categories.

- **Orissa Consolidation of Holdings and Prevention of Fragmentation of Land (OCH&PFL) Act 1972** – It aimed at prevention of fragmentation of land and exchange of equitable land for bigger farming.

- **Orissa Prevention of Land Encroachment (OPLE) Act 1972-** It aimed at prohibiting unauthorized encroachment of government land on one hand and settlement of a limited acreage

of unobjectionable Government land if unauthorisedly occupied by a landless or homesteadless person in his favour.

- **Regulation 2 of 1956 (OSATIP- Orissa Scheduled Area Transfer of Immovable Property Regulation):** Besides the Constitution of India empowers each concerned State government to make regulations for checking alienation of land owned by Scheduled Tribes in 5th Scheduled Areas. Accordingly Regulation-2 of 1956 (OSATIP) provided that the land held by a person belonging to ST cannot, without permission from the appropriate authority, be transferred to a person not belonging to ST. This law also allows for a suo moto action by the Collector for restitution of alienated tribal lands. As already mentioned, Sections 22 & 23 of the Orissa Land Reform Act forbid land alienation by tribals in non-scheduled areas.

Constitutional Safeguard of the Land Reform Laws

It is interesting to know that the first Amendment to the Constitution passed in 1951 provided that the major land reform laws passed by different States of the country including Orissa would be put into a newly created Ninth Schedule of the Constitution along with the addition of a new clause, 31-B in the Part-III (Fundamental Rights), so as to protect these new fangled legislations from the possible sabotage and threat by the sections of vested interests of erstwhile feudal regimes through judicial review. Plainly speaking, this amendment meant that no court including even the apex court, which has otherwise the power of judicial review of the Acts passed by the legislature could hold any of the land reform laws ultra vires the Constitution because these were sheltered under 9th Schedule of the Constitution. Ironically enough, these very purportedly progressive laws did also, albeit unwittingly perpetuated gender inequality. While some such protected laws didn't conceive of the need for endowing women with property rights, the remaining ones gave a large space to the local customs and traditions, quite patriarchal and patrilineal in nature, to act as the basis for inheritance of property rights. Thus, there is a serious debate going on at national level and in States whether the era of constitutional protection given to certain property related laws like land reform Acts has outlived the times or not from the angle of a new concept of social equality and gender justice.

But all said done, in the peculiar milieus of India and more so in a backward State like Orissa there exist always a big hiatus between legal rights and their actual implementation. Even where the laws favour the women in terms of their entitlement and ownership over property, the in-built patriarchal mindset of the population as a whole works as an invisible but formidable impediment to the translation of gender-sensitive provisions of law into reality.

Can women legally have lands registered in their own names?

Yes. Under a concurrent reading of OLR Act and Hindu Succession Act 1956 as amended in 2005 it is possible albeit under the following circumstances:-

- After the death of husband, wife becomes a joint share holder of the deceased's land, along with her children.
- If a family has more land than the ceiling set by the government, the surplus land is recorded in the name of the wife/daughter to avoid ceiling restrictions.
- When there is no male heir in the family, daughters get the RoR transferred to their names.
- Unmarried women (those who could not marry and are living with their parents/ brothers) get some land in their name. This does not come automatically, however, and often has to be claimed and fought for.

- There are cases in which a woman's in-laws transfer the RoR in their daughter-in-law's name, such as in a situation where an alcoholic man's parents believe that their son will sell off all their land.

- In some cases, when a woman marries a widower or divorced man, her parents generally insist that the man transfer some land in his new wife's name. This is done to ensure some economic security for the second wife in case the man marries for a third time while the second wife is alive. Another reason is that any children the man may have by his first wife might claim the entire property of the father leaving the second wife with no legal claim.

ORISSA LAND REFORMS- A CRITICAL OVERVIEW

About a decade back, a World Bank sponsored study was conducted by Robin Mearns & Saurabh Sinha into lessons of Orissa's land reforms involving the concerned Governmental agencies, civil society organisations and various other stake-holder groups and its report came out under the title '*Social Exclusion and Land Administration in Orissa, India, September, 1998*'. In absence of a more comprehensive and analytical work on the subject, it is appropriate to recapitulate what this study had pointed out by way of its findings.

Land distribution: While land reforms legislation has reduced the share of operational area held under large holdings (> 6 ha) in Orissa since the 1950s, the major gains have been in the share of total area accounted for by medium-sized farms. Over half of all households operate small, marginal or sub-marginal land holdings (< 2 ha). The proportion of total agricultural land they operate has remained substantially unchanged since the 1950s, although substantial gains in area accrued to the largest among them during the 1960s, thereby swelling the ranks of farm households with medium-sized holdings by the 1970s. The proportion of households operating no land, whose livelihoods are based principally on agricultural labor, increased substantially following the widespread eviction of tenants from erstwhile landlord estates, and by the early 1960s accounted for a third of all households. Since the 1960s, some have gained access to at least some land, but around a quarter of all households in Orissa still operate no land. Overall, in spite of land reforms, socio-economic and demographic change over the last half century, these trends suggest that formidable obstacles continue to prevent the rural poor from improving their access to private arable land.

Land revenue systems: Historically, different parts of the state inherited different land revenue administration systems from Bengal Province (northern Orissa), Madras Presidency (southern Orissa), Central Provinces (western Orissa), and the former princely states. Some 80 percent of the total area fell under zamindari systems, in which many layers of 'intermediaries' between the landlord and cultivator were responsible for exacting land revenue. Ryotwari (peasant-proprietor) systems prevailed over parts of southern Orissa that had been under Madras Presidency. Some of the complexity of land revenue administration in Orissa today may be attributed to the legacy of these diverse systems, which were brought under a unified legislative structure only following independence. The legacies of these distinct systems also have certain lasting effects on the ground. For example land records tend to be more complete and accurate in the former ryotwari areas in which, unlike in zamindari areas, there were village accountants. This not-so-distant historical record can be important in resolving land disputes even today, in establishing the basis for contemporary land claims.

Main provisions in land legislation: Orissa is one of a few states in India that has attempted legally to abolish tenancy (land-leasing), except in the case of persons of disability (the

definition of which includes widows, divorcees, and other unmarried women). Land rights may pass to any cultivator who can demonstrate continuous occupation over a period of at least 12 years ('adverse possession'). While tenancy remains widespread, these restrictions have led to concealed forms (e.g. oral contracts) which give tenants little or no protection in law. A ceiling on individual land holdings also applies, and currently stands at 10 'standard acres' (depending on land quality). In addition to these provisions, which fall under land reforms legislation, some major Acts too were put into place to govern concurrently the arena of land administration in the post-independence period, providing the standards and criteria for land survey and settlement, land consolidation and prevention of land fragmentation, and prevention of encroachment on government land.

Gender and land rights: As in other parts of South Asia, women may appear to enjoy certain land rights in law, but they rarely translate into effective control over land in practice, owing to embedded, gender-biased social norms and customs. It is suggested that women's access to and effective control over land may be enhanced through joint land titling. This measure is rather limited in scope, since ideally what need to be promoted are women's independent land rights. But while the principle of joint titling is readily accepted at the level of the Government of India, it has yet to be realized in practice in Orissa. In focus group discussions, village women assert that their bargaining power vis à vis their husbands and in-laws would be enhanced considerably by joint title over land. The common objection that this may make it more difficult for women to escape from abusive marriages was for them a second order consideration.

Organization of land administration: Land administration in Orissa is carried out by two, parallel government agencies: the Department of Revenue and Excise, responsible for policy formulation and revenue collection; and the Board of Revenue, responsible for the implementation of land policy and judicial matters. Land revenue has declined as a share of state revenue from over 30 percent to less than 2 percent over the last forty years. As a result, land administration is perceived as a burden on the state, rather than a service which, if made more efficient, could potentially contribute to raising agricultural productivity. Stamp duties and other fees payable upon the registration of land sales, on the other hand, account for up to 6 percent of state revenue. There is little or no coordination between the maintenance of land records, which is the responsibility of revenue inspectors and tehsildars; and land registration, which is the responsibility of sub-registrars. Measures to coordinate these two services and enhance their efficiency through computerization, while at the same time reducing transaction costs to individuals in the land market, could go a long way towards stimulating the land market. Whether or not this would enhance access to land for the rural poor, however, depends on the degree of transparency with which land administration is conducted in practice. Access to information and public awareness of rights seem to be critical factors. A recent initiative of the Revenue Department, Government of Orissa, to disseminate a local language 'how to' manual on matters of land transfers and access to land records, is a most welcome contribution in this area.

Land survey and settlement operations: Survey and settlement operations evolved historically as a way to establish a record of rights in land, on which to base the assessment of land revenue. Periodic, revisional surveys, conducted every 25-30 years or so, serve as the major means to update land records. Since the process of mutation following an individual land sale-purchase transaction is burdensome, protracted and (for many) prohibitively expensive, many land holders prefer to wait until the next revisional survey to obtain title to their land. In practice, the survey and settlement process provides widespread opportunities for rent-seeking on the part of the government officers involved, and it is not uncommon for poorer and less powerful landholders

to 'lose' at least a proportion of their land in the official record. Land-grabbing by more powerful individuals, facilitated by exerting leverage over settlement officers, appears to be commonplace during survey and settlement operations. While the contested amounts of land are usually small, the net effect is systematically to discriminate against the rural poor and the socially excluded. Four types of land transaction are considered in the main analysis. Land may be purchased, inherited, rented (leased) or, in the case of commons and public land, encroached upon. Each of these types of transaction, and the state's responses through land law and administration, has particular implications for the ability of the rural poor to improve their access to land.

Land sale-purchase transactions: These are estimated to account for around 80 percent of land transactions at village level, although the share of total agricultural land changing hands is typically as low as 5-7 percent per year. Land markets are thin for various reasons. In large part, there are few willing sellers of land, as the price of land does not reflect its full social value. Most sales are therefore distress sales by smaller farmers, and most purchases by larger farmers. High transaction costs in land markets are also a significant obstacle to land purchases. Uncertainty regarding the true ownership of the land is rarely a serious concern in the case of intravillage transactions. However, many sale-purchase transactions go unrecorded in land records, since the process of mutation (voluntary registration of a sale deed and acquisition of title) is complex, lengthy and expensive. Officially sanctioned transaction costs amount to at least 17 percent of the value of the land transacted, and the 'informal' transaction costs required to expedite the process may amount to as much again, even discounting the opportunity costs of repeated visits to registrar and tehsildar's offices over a period of several years. The computerization of land records may contribute to a reduction in these transaction costs, but only if coordinated with computerized land registration.

Land fragmentation: the fragmentation of land holdings into tiny, scattered plots is a consequence of the custom of partible inheritance, in which each individual plot is subdivided among various heirs. There is thus a lifecycle effect, in which newly formed households acquire very small holdings on the subdivision of formerly joint family holdings. Land fragmentation is widely perceived to operate as a brake on agricultural productivity, and the Government of Orissa has responded by implementing a land consolidation program since 1974. Land consolidation does not contribute directly to improving access to land for the rural poor, since it aims to leave land distribution unchanged. But as in the case of survey and settlement operations, there is some evidence that land consolidation operations result in a certain amount of discrimination against the rural poor and other socially excluded groups. In spite of continuing demographic pressure, the rate of fragmentation actually declined from an average of 6.4 to 5.0 parcels per holding between 1961-62 and 1981-82. Much of this decline took place before the impact of the land consolidation program could be observed, which suggests that a certain amount of individually initiated land consolidation takes place through the voluntary exchange of land plots in the market. Evidence from the field confirms that land fragmentation persists for two main reasons: the need to spread risk, particularly in unirrigated areas and where soil quality is more variable; and the need to hold land as a liquid asset, which may be sold off in discrete parcels to meet contingencies such as marriage or funeral costs. No data exist in Orissa on the rate of fragmentation by district or region. Findings from the field suggest that land fragmentation is perceived by farmers to be a more serious problem on the coastal plains, where land is more reliably watered and soils are more uniform in quality, than in the hill areas of western Orissa, where there has been considerable resistance to the government's land consolidation program. To the extent that both poorer and better-off farmers wish voluntarily to

consolidate their holdings in the interests of raising productivity, the most effective public interventions are likely to be those that reduce transaction costs in the land market.

Encroachment on commons: The rural poor partially compensate for their lack of access to private, arable land through access to public/ common land. Commons account for an estimated 20 percent of the total land area of Orissa, including 'wastelands', grazing lands, and certain types of forest land. Over recent decades, the best quality common land has been encroached upon by both resource-poor and resource-rich farmers, and what remains is frequently too degraded to be of significant value. Legislation exists to prevent encroachment on government-owned 'wastelands', and to transfer up to an acre of 'unobjectionable' public land to landless families, but is largely ineffective on both counts. There are powerful incentives for revenue inspectors to take bribes from encroachers to permit continued cultivation, rather than to initiate eviction proceedings. More powerful individuals may thereby acquire permanent occupancy rights through 'adverse possession'. While the rural poor also acquire de facto but insecure rights over revenue wastelands through encroachment, they are often unable to convert them to the de jure rights to which they are legally entitled, since the act of encroachment is regarded as illegal in the first instance. Access to commons is especially important in the livelihoods of the 22 percent of Orissa's total population who live in 'scheduled' tribal areas. In spite of legal restrictions on transfers of land owned by people of scheduled tribes to non-tribal people, land alienation from indebted tribal families remains a persistent problem. The most promising avenues for protecting rights of access to common land for the rural poor are through efforts to raise public awareness and access to information. Some NGOs in Orissa have been successful in pursuing public interest litigation to defend tribal land rights. Following their lead, the strengthening of local panchayats could make a vital contribution towards promoting the watchdog function of civil society institutions. Only with strong civil society institutions will there be effective demand from below for accountability within the lower levels of land revenue administration, thereby limiting the possibilities for evasion of the legislation designed to prevent encroachment on commons. With such safeguards in place, the computerization of land records at tehsil level would also contribute towards making information on the extent of encroachment more publicly accessible.

Land leasing (tenancy): The Orissa Land Reforms Act prohibits sub-letting of land, regulates rents (to a maximum of one quarter of gross produce), and grants occupancy rights to long-standing tenants. In spite of these restrictions, tenancy remains widely prevalent, under 'illegal' contracts which landlords and tenants have a common interest in concealing. This accounts for widespread under-reporting of the area leased-out (and, to a lesser extent, leased-in). The best available estimates suggest that on average, around 20 percent of farm households participate in the land-lease market, and that over 80 percent of leasing activity (both in and out) is by small and marginal farmers. There is wide inter- and intra-regional variation in both leasing activity and the terms of tenancy contracts. Sharecropping is the predominant form of tenancy contract in Orissa, accounting for perhaps half of the total leased-in area, although it is declining over time in favor of fixed-rent contracts (whether in cash or in kind). Share tenancy remains more prevalent in non-irrigated villages, owing to its greater potential for risk-sharing between tenants and landlords. In irrigated villages, fixed-rent tenancies may now account for three quarters of land-lease contracts. Contract terms vary widely, depending on the respective labor and capital contributions of tenant and landlord, the crops being produced, and extent to which the physical location of the leased-out plots permits close supervision. Regardless of the nature of the contract, rents are invariably higher than the legally stipulated maximum of one quarter of gross production. The land-lease market is clearly an important means by which the rural poor gain

access to land. While there is little evidence of exploitative relations between landlords and tenants, there is some evidence that markets for other factors – particularly labor and, to a lesser extent, credit – are interlinked with the land-lease market. These inter-linkages explain why it is also in tenants' interest to conceal tenancies, and why tenants are reluctant to press claims for lower rents or more secure rights of occupancy.

ORISSA LAND REFORMS ACT AND WOMEN'S ACCESS TO LAND

The survey of the legislative framework in Orissa confirms that 'land reform policies have been based on the principle of redistributive justice and on arguments regarding efficiency (land to the tiller, fixation of ceilings, prevention of fragmentation, etc.); but on neither count are gender inequalities taken into account' (*Agarwal Bina, 1994, A Field Of One's Own: Gender and Land Rights in South Asia, Cambridge University Press, Cambridge.*). No law has dealt specifically with the need for increasing women's access to land. Rights to land for Hindu women are according to the Hindu Succession Act 1956, which provides for daughters, widow and mother of a Hindu man dying intestate to inherit property equally with his sons. In practice, however, significant and persistent gaps exist between women's legal rights and their actual ownership of land, and between the limited ownership rights women actually enjoy and their effective control over land (*Agarwal Bina, 1994, A Field Of One's Own: Gender and Land Rights in South Asia, Cambridge University Press, Cambridge*). For example, the Orissa Land Reforms Act 1960 does not mention the order of devolution at all. So whether the devolution of tenancy land will be according to personal law, or would follow a different order of devolution, is open to interpretation. Gender inequalities in OLRA have also arisen from enactments relating to the fixation of ceilings on two counts, namely:

- **the definition of 'family'**: Article 37 of the Act defines a family as the individual and his/her spouse and their children, whether major or minor. Later the law was amended to include married daughters whereas a childless widow is not considered to be a member of her deceased husband's family.

-**recognising only men's and not women's independent land rights**: Women's rights to land are most often subsumed under those of her husband. A woman does not count as an owner in her own right, which leaves her disproportionately vulnerable to losing her land.

OLRA's 'Charity' towards women:

There is, however, a deeper issue of the women's entitlements under OLRA than meets the eye. A concurrent reading of the Section 2(21) and Section 6 (3) of the OLRA says that '**persons under disability**' and '**privileged raiyats**' shall be exempt from the restriction on leasing out the land to the tenants. A 'person under disability' refers to: (i) a widow or unmarried woman, or a woman divorced or separated from her husband by a decree or order of court; (ii) a minor or a person of unsound mind; and (iii) a person incapable, because of some other physical or mental disability, of cultivating personally the land he held as a raiyat. The group of 'Privileged raiyats' include (i) trusts holding land for public purposes; (ii) charitable and educational institutions engaged in work for public benefit; and (iii) religious or other institutions by which the public benefit. On the face of it, this provision is a special consideration for female heads of households to lease out their lands for cultivation when leasing is otherwise prohibited. But it masks two important underlying presumptions: (i) that women are perceived to be in need of protection from the rigours of cultivation and so should be allowed to lease out their land; and (ii) that only female heads of households should have control over land, while for other married women living

with their husbands control over land is subsumed under the 'family'. The first presumption ignores the fact that bulk of the agricultural tasks (especially, labour intensive tasks such as rice transplanting, weeding and harvesting) are, in any case, performed by women. In another respect, however, the OLRA seems to be charitable towards the women in that it allows land gifted to a daughter on the occasion of her marriage to be excluded from the ceiling area of the father (*vide Interpretation of Section-37 of OLRA in 53 (1983) CLT 41- F.B.*). Ostensibly, this is to encourage land transfers to daughters, but it rarely happens in practice. Generally, women do not have RoRs in their own name. In a family, the RoR is recorded in the name of the husband. Even if the RoR (Patta) is allowed to be recorded in the joint names of both the woman and her husband to prevent indiscriminate land sale by husbands without consulting their wives, still there would arise a real problem for the woman in certain circumstances. In the event of a divorce, the wife would be able to claim only a share of the joint property, while she was entitled to the whole property. Very often parents have to sell off a piece of land to arrange for a dowry for the daughter. But even if the demand for dowry is met, there is no guarantee that the daughter will be able 'to live happily after marriage'. In the event that she is sent back to her parents on some trivial ground or other, the dowry would remain with her in-laws. If she had been given a piece of land instead, she would still have had it with her even after her forcible ouster from the in-laws family.

Further, women's legal rights in land conflict with deep-seated social norms and customs, and are rarely recognized socially to be legitimate. Thus, men are considered the de facto land owners, even when the RoR is in the wife's name. All the major decisions around land transactions are in reality taken by the husband.

While women would like to have an equal share in their parental land, a right now allowed under Hindu Succession Act, 1956 as amended in 2005, they are quite aware of the cultural constraints that are difficult to overcome. For instance, if a woman demands a share of her deceased father's land, she often has to sever all relations with her brothers. There is usually a strong disincentive for many women not to press claims on parental property. This is because culturally a woman is not expected to claim any property from her parents/brothers. If she is unmarried and/or is in a financially tight situation, she might get some land if the brothers are sympathetic and willing to share. Thus, there are strong pressures on women to cede their legal rights to their brothers, reinforced by social stigma, seclusion practices, and other sanctions. Given the lack of alternatives, women tend to be dependent on their brothers for economic and social support in the event of widowhood or marital break-up. Various factors have thus combined to frustrate the stated intentions of land reform legislation in Orissa. However, legal restrictions are only one part of the story. The other part relates to the many formidable obstacles that constrain the poor, especially the rural and tribal women from exercising even the limited rights they currently have. Part of the explanation for this lies also in the complex, archaic, inaccessible operational procedures of the state's land administration, which combine to create high transaction costs in land transfer processes.

LAND REFORMS IN ORISSA: A MORE FOCUSED DISCUSSION

It is worth mentioning here that on the whole, land reform legislation has had only limited success in Orissa. Weak land revenue administration and lack of up-to-date land records were important contributory factors. At the same time, various provisions of different Acts were challenged in the Courts because of a number of shortcomings in the law. Often this required amendments to the original Acts and further delayed their implementation. Abolition of

intermediaries, which was achieved relatively easily in other states, was not completed in Orissa until 1974 owing to the absence of reliable records. Finally, a 'blanket notification' had to be issued by administrative fiat. As learnt from a World Bank sponsored Study done in 1998, by then more than 6000 cases relating to abolition of intermediaries were still pending in the Orissa High Court (*Source: Social Exclusion and Land Administration in Orissa, India, September, 1998 by Robin Mearns & Saurabh Sinha*). The initial ceiling on land ownership, fixed at 33 standard acres, was set at a high level and enabled intermediaries to evict tenants. By the time it was reduced to 10 standard acres in 1972, large landowners had had sufficient opportunity to escape the ceiling limit by 'transferring' the surplus land in the name of relatives even while they maintained de facto control. As in other states, the implementation of tenancy reforms in Orissa has generally been weak, non-existent or counterproductive, resulting in the eviction of tenants, their rotation among landlords' plots to prevent them acquiring occupancy rights, and a general worsening of their tenure security (*Appu, P.S., 1997, Land Reforms in India: A Survey of Policy, Legislation and Implementation, Vikas, New Delhi*). Even though the Orissa Land Reforms (Amendment) Act, 1965 and its subsequent amendments in 1973 and 1974 conferred full ownership rights to tenants on land in their possession, tenants as a matter of fact didn't enjoy security of tenure as it is difficult in practice for them to establish their ownership rights. This is in spite of the strict provisions under the Orissa Survey and Settlement Act, 1958 to record names of tenants who are the actual cultivators. The legislative ban on leasing has led to concealed tenancy arrangements that have tended to be even more informal, shorter (increasingly seasonal), and less secure than they had been prior to reform. The provision of the maximum rent is easily flouted, and various government reports and village studies have recorded the rent paid by tenants across the state to be twice the stipulated amount. Even the relatively minor pieces of legislation designed to ensure effective revenue administration have not been very successful. In the face of customary inheritance laws, thin land markets, and widespread variation in land quality, the OCH&PFL Act has failed to achieve both its objectives of consolidating holdings and preventing fragmentation. At the same time, increasing pressure on land combined with distorted incentives has served to undermine the basic provisions of the OPLE Act. (*Source: Social Exclusion and Land Administration in Orissa, India, September, 1998, by Robin Mearns & Saurabh Sinha*).

Prohibition of Tenancy, a flawed legislation:

The abolition of tenancy in order to vest land ownership with the actual tillers of the land formed the corner-stone of most land reform efforts in India including Orissa in the wake of Independence. It was predicated on the widely (and then largely correctly) held belief that the tillers of the land were locked in exploitative relationships with intermediaries who had little interest in the land but for the extraction of rent. The Orissa Estates Abolition (OEA) Act, 1951 initially permitted landowners to resume 33 standard acres for personal cultivation, which led to the large-scale eviction of tenants. No parallel legislation was introduced to protect tenants. Under the Orissa Land Reforms (OLR) Act, 1960 (as amended in 1972), the leasing of land was explicitly banned, except where lessees fell into certain excluded categories, such as Privileged Raiyats or Person under Disabilities. Under the 'adverse possession' clause in the OLR Act, if it can be demonstrated that a tenant has cultivated a parcel of land continuously for 12 years, permanent occupancy rights to that land may legally pass to the tenant. But the institution of tenancy has proved to be highly resilient on the ground, for reasons outlined below, and attempts to regulate tenancy by legislative means have been counter-productive. It is as much widespread in Orissa as it is illegal, though now less exploitative and better concealed from official records.

A substantial literature now corrects many long-standing perceptions that share tenancy is necessarily inefficient or that landlord-tenant relations are necessarily exploitative (Otsuka and Hayami 1988, Singh 1990). Share tenancy represents a second-best response to missing, thin and imperfect markets for land, credit, labour, management, information, and insurance, and performs some very important functions which would otherwise have to be fulfilled by other institutions; it is neither necessarily inefficient nor a barrier to the adoption of new technology; tenancy contracts often play an important role in matching land, labour and capital endowments. They are not necessarily exploitative, but where they are, owing to the unequal bargaining power between agents, attempts to 'fix' relations in one sphere can lead to compensatory shifts in other contracts to leave tenants net worse off (*Mearns, R., 1998 'Access to Land in Rural India: Policy Issues and Options', Policy Research Working Paper, World Bank, Washington, DC*). It is therefore important to understand how formal restrictions on tenancy coupled with loopholes in the law, its lax implementation, lack of updated land records, and the manipulation of revenue administration by the relatively rich and powerful, combine to restrict access to land by the rural and tribal poor.

There is general agreement that available data on both the number of tenants and the acreage under tenancy are underestimates (*Singh, I., 1988, Tenancy in South Asia, World Bank Discussion Paper No. 32, World Bank, Washington, D.C.*). Both the Census of Land Holdings carried out by the National Sample Survey Organisation, and the Agricultural Census, tend to underestimate the proportion of land under tenancy. However, the former is considered more reliable as it is based on independent household surveys while the agricultural census is based on a retabulation of the land records of owner-cultivators. The under-estimation of tenancy stems from reporting bias as lessors tend to understate the leased-out area owing to (i) the fear that tenants will stake claims in favour of continued right of cultivation; (ii) desire to escape the ceiling on land holdings; or (iii) a combination of (i) and (ii). The share of operated area leased-in is therefore considered to be a more reliable measure of the magnitude of agricultural tenancy than the share of owned area leased-out as lessees have fewer incentives to under-report the extent of area leased-in (*Narain, D. and P.C. Joshi, 1969, 'Magnitude of Agricultural Tenancy', Economic and Political Weekly; Oldenburg, Philip, 1990, 'Land consolidation as land reform, in India', World Development*). Nonetheless, land reform legislation designed to prohibit sub-letting, regulate rents, and confer security of tenure has given many landlords and tenants a common interest in concealing agreements, which may be deemed illegal (*Singh, I., 1988, Tenancy in South Asia, World Bank Discussion Paper No. 32, World Bank, Washington, D.C.*).

Unfortunately, there is a dearth of surveys and few village studies in Orissa, which can offer real insights into the tangled tenancy issues in Orissa. (*Sarap, K., 1998, 'On the Operation of the Land Market in Backward Agriculture: Evidence from a Village in Orissa, eastern India', The Journal of Peasant Studies; Swain, M., 1998, Peasant Agriculture and Share Tenancy in Orissa: Examining Neoclassical and Marxist Approach, Commonwealth Publishers, New Delhi*). It is estimated that on average, 10-20 percent of households in each village participate in the land-lease market in Orissa, although this is subject to wide inter- and intra-regional variation. Using NSS data, *Swain (1998)* reported that 17 percent of households leased-in land in 1981-82. More than 80 percent of the leased-in area is in the size class of less than 10 acres, and the percentage of leased-in area to operated area decreases with the increase in size of operational holding. At the same time, nearly 85 percent of the area leased-out is by farmers with less than 10 acres. Together these results indicate considerable leasing activity (both in and out) by small and marginal farmers. Land leasing or tenancy may take the form of fixed rentals or

sharecropping arrangements, in which rents are paid in cash, in kind, or a combination of the two. Sharecropping is still the predominant form of tenurial arrangement in Orissa. About 42 percent of the leased-in area is under sharecropping as against about 14 and 8 percent respectively under fixed-produce and fixed-rent contracts (*Swain, 1998*). However, share tenancy seems to be more prevalent in non-irrigated villages than in irrigated villages. For example, Swain (1998) reports that more than 40 percent of the operational area is under share tenancy in a dry village in Dhenkanal district as against 12-19 percent in irrigated villages in Cuttack district. This pattern seems to confirm the persistence of the potential for risk-sharing under share-cropping contracts.

Under the circumstances, the prohibition of tenancy or share-cropping as built into the land reform legislations of Orissa has served neither the overall interest of the advancement of agriculture in the State nor any of the stake-holders, be they the land-owners or the tenants/share croppers. Therefore it deserves to be recast at the earliest to conform to the ground reality on one hand and the emerging scenario on the other.

Land alienation from tribal groups:

Orissa has a large tribal population (22 percent of total population, three times the average for India) and tribal land alienation by moneylenders has long been recognised to be a critical issue. Tribal people, with generally low educational and skill levels and limited access to formal credit markets, have had little option but to seek credit at high rates of interest from moneylenders. In the event of default on loan repayments, moneylenders have tended to appropriate first tribals' forest produce, and later their land itself. This process has been reported in numerous village studies dating at least as far back as Bailey's classic study since the late 19th century (*Bailey, F. G., 1957, Caste and the Economic Frontier: a Village in Highland Orissa , Manchester University Press, Manchester*). Alienation of land held by members of Scheduled Tribes (ST) has been restricted by legislation as a matter of public policy. After Independence, the Constitution of India enabled state governments to make regulations restricting alienation of land by STs in Scheduled Areas. In Orissa, Regulation 2 (1956) in Scheduled Areas provides that land held by a person belonging to a scheduled tribe cannot, without permission of the appropriate authorities, be alienated to a person not belonging to a scheduled tribe. The law also allows for a *suo moto* action by the Collector for restitution of alienated tribal lands. Section 22/23 of the OLRA applies to prevent land alienation by tribals in non-scheduled areas. In practice, however, land alienation remains prevalent if officially unacknowledged (*Fernandes, W., G. Menon and P. Viegas, 1988, Forests, Environment and Tribal Economy: Deforestation, Impoverishment and Marginalisation in Orissa, Indian Social Institute, New Delhi, 1988*). When money is lent, the loan agreement ensures that the moneylender has rights over all the produce for a certain number of years (usually nine). Since the borrower is therefore left without any income, he is forced to keep borrowing, thereby mortgaging the produce of his land for many subsequent years. Rights to the produce of the land eventually accrue to the moneylender for such a long period that tribal land owner is reduced to the status of little more than a bonded labourer producing crops for the moneylender, on land that legally remains his own. One study of four districts (Dhenkanal, Ganjam, Koraput and Phulbani) estimated that about 56 percent of the total tribal land was lost to non- tribals over a 25-30 year period through these means (*Viegas, P., 1987, 'Land Control and Tribal Struggle for Survival', Social Action*). Of this total, 40 percent was lost through indebtedness and land mortgage, 23 percent through encroachment, 17 percent as a result of displacement by development projects, 15 percent through personal sale, and the balance due to floods and other natural calamities.

A less well-understood pattern is the administrative erosion of tribals' communal land rights through survey and settlement operations themselves. In recent decades, cadastral survey by the chain survey method has gradually given way to the plane-table method to reduce operational costs. But land with a gradient greater than 10 percent cannot accurately be surveyed by the plane table method, and in Orissa these unsurveyed lands have customarily been lumped together as 'uncultivable wasteland' in the record-of-rights in land. The outcome is catastrophic for tribal groups. In a 1961 land survey and settlement operation in Niyamgiri hills of south-western Orissa, for example, only 15 acres out of a total village area surveyed of 2647 acres were declared to be 'cultivable land'. Only on this land was rent assessed and demanded of the 16 owners in the village. One acre was recorded as grazing land, 7 acres under housing, and only half an acre classified as common land for the village graveyard. The remaining 2624 acres, being of a gradient greater than 10 percent, were recorded as (state-owned) 'uncultivable wasteland'. In reality, much of this area was owned by tribal households, and was cultivated in demarcated plots on which fruit trees had been planted. Anecdotes abound concerning the loss of tribal land to powerful interest groups and the lower levels of the land revenue administration (*Source: Roy Burman, B.K., 1987, 'Historical Process in Respect of Communal Land System and Poverty Alleviation among Tribals,' Social Action*). Even discounting a certain amount of exaggeration, it is difficult to ignore the emerging picture of a steady process of land alienation, in spite of the well-intended legislation designed to prevent it. Clearly, legislation alone is inadequate to bring about social justice. It needs to be accompanied by socio-political consciousness-raising and awareness-building among tribal groups of the sort that is being undertaken throughout Orissa by civil society organisations.

OPLE Act and Tribal poor:

The central purpose of the Orissa Prevention of Land Encroachment (OPLE) Act, 1972 is to prevent unauthorised occupation of government land. It is even-handed and clearly lays down penalties for all instances of encroachment, to be followed by eviction. Through a 1982 amendment the state has recognised that there are different types of encroachers on different types of lands. While all encroachers are required to be evicted from 'objectionable' lands, landless encroachers are legally entitled to be settled on up to 1 standard acre per family of 'non-objectionable' land (i.e. cultivable wasteland). As against such provisions, the ground reality presents a different story. The eviction process proceeds as follows: (i) based on his enquiries, the RI files a report to the land revenue (tehsildar's) court, and legal proceedings are initiated; (ii) the tehsildar issues notice to show cause why penalty should not be imposed; (iii) encroacher shows such cause; (iv) if this cause is admitted as valid, the mutation process is initiated for the issue of patta to the land; (v) if cause not admitted as valid, notice is issued for imposition of penalty and eviction within 30 days. The statutory minimum period for the entire process is three months, but in practice cases may take between six months and a year to settle/ dispose of. Steps (i) to (iii) in the above sequence are similar for both landless and landowning encroachers on 'unobjectionable' land. Only landless encroachers may move to step (iv), whereas landowning or other ineligible encroachers are issued penalty and eviction notices as in step (v). As a matter of fact, the incentives for RIs and other tehsil-level officials to 'book' encroachment cases in this manner are very low, as encroachment represents a lucrative source for them for rent-seeking from the poor, vulnerable tribal families. Although legally entitled to claim rights to 'non-objectionable' land, landless encroachers must first commit what is regarded as an unlawful act (encroachment) and be 'booked' for it before they are allowed to press their claim by establishing 'due cause' by virtue of their landlessness. Only then, and after due process of law, may they be issued with the patta which regularises their land rights. The entire process hinges upon whether or not the case is 'booked' by the RI in the first place. There are few or no

incentives for the RI to do so and frequently bribes are demanded or eviction threatened. The landless encroacher, if unaware of their rights under OPLE, is likely willing to succumb to the RI's demands in return for temporary access to cultivable land. Even if aware of their rights, landless encroachers may still prefer to take the easier option of regularly bribing the RI since they are also likely to be aware of the numerous transaction costs incurred at the tehsil office in initiating a mutation and obtaining patta to the land.

At the other end of the spectrum, we find that penalty and assessment rates are very low. The penalties for encroachment on government land, fixed in 1976, are set at the very low level of Rs.100 per acre per year. The assessment is based upon land classification fixed by settlement authorities; and if the land is irrigated, then water rates of Rs.36 per acre (during rabi season) and Rs. 16 per acre (during kharif) are also levied. If the land is put to commercial use (e.g. operating a rice mill), the penalty is Rs.10 per day. These low penalty and assessment rates provide a perverse set of incentives for the RI and the tehsildar that actually serve to encourage encroachment on government land. The imposition and collection of penalties from encroachers has emerged as an important component of the tehsil's income from 'penalty and rent cess', owing to the now very low levels of land revenue. Perversely, the tehsildar may be more willing to allow encroachment on objectionable land since the penalty amounts to more than the land revenue demand from that land. Since land revenue derives from a more or less constant area, we assume that 'increased pressure on land' is a euphemism for increased encroachment on government land, thereby increasing potential government income from penalties. (*Vide Robin Mearns & Saurabh Sinha, Social Exclusion and Land Administration in Orissa, India, September, 1998*). Thus the OPLE Act being what it is since inception has encouraged the landed and relatively better-off sections in the rural and tribal areas to grab more and more of the commons on one hand, while pushing the really landless and homesteadless persons to the clutches of never-ending, rapacious exploitation by the RI and other Revenue Officials on the other.

FACTS OF ORISSA'S LAND REFORMS AND GENDER CONNEXION, IF ANY

After having made a general assessment of the land reforms programme in Orissa, it is worthwhile to take a look at the official figures whatsoever available on the achievements shown in each related field of this programme, especially with a view to find out if and what place was accorded to gender concerns in them.

Restoration of Land under Regulation-2 (OSATIP) 1956 :-

As already indicated, in order to control and regulate transfer of immovable properties by the members of the S.T.s in the Scheduled Areas in the State, the Regulation 2 of 1956 was enacted. The Regulation prohibits, among other things, transfer of immovable properties belonging to members of STs in favour of persons not belonging to STs. Any such transfer shall be null and void, if the same has been made without written permission of the competent authority. In case any transfer has been made in contravention to this provision in the regulation, the competent authority either suo motu or on a petition filed on that behalf, shall declare such transfer as illegal and shall restore the land to the lawful land owner or his/ her heirs. The regulation also provides for eviction of persons in forcible occupation of the land belonging to members of STs and restoration thereof. The Regulation provides for penal action in respect of illegal transfer as well as unauthorised occupation.

As per the official statistics (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*) the progress achieved under Regulation 2 of 1956 since its inception till the end of March, 2007 is indicated below:

-	No. of cases instituted	1,06,547
-	No. of cases disposed of	1,05,578
-	No. of S.T. beneficiaries	65,660
-	Extent of land ordered to be restored	Ac.57,162.21
-	Extent of land actually restored	Ac.56,519.95

While the overall performance of the Government since inception till March 2007 remains very poor, there is no disaggregated data available showing any gender-wise break-up among the beneficiaries or gender-wise break-up of the total restored land. It shows the Government lacked and lacks to this day any concern for vesting the tribal women with the rights over land that was restored under OSATIP Regulation, 1956.

Transfer and Restoration of Land u/s OLR Act, 1960

As already indicated, as per Section 22 of OLR Act, any transfer of land belonging to STs / SCs to people not belonging to STs/SCs without the prior permission of the competent authority is declared void. Under Sections 23 and 23A of OLR Act, there is also provision for restoration of land of SCs & STs to the respective recorded tenant, if it has been transferred without prior written permission of the competent authority or if the land has been under unauthorised occupation by non-SC and non-ST persons.

In the official statistics (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*) the details regarding the number of persons belonging to SCs & STs benefited under the above provisions and the land restored to them under Sections 23 & 23-A since inception to this day are not available except for the year, 2006-07 as mentioned below:

<u>No. of beneficiaries</u>	<u>Area of land ordered for restoration</u>
ST 229	Ac. 57.251
SC 1350	Ac. 1389.923

Here also one can notice that there is no disaggregated data showing the number of women beneficiaries among the whole, which again shows the absence of gender concern among the officials executing the OLR Act.

VASUNDHARA (Distribution of House-sites to Homesteadless Persons):-

There is now great propaganda going on by the State Government of Orissa for distribution to Government land to the needy persons under the aegis of the Revenue Department. In fact, the programme of allotting four decimals to a homesteadless family for the purpose of house-site has been formally continuing since the year 1974-75. But of late, since 2005-06 the year of launching Vasundhara this programme is being supposedly implemented in a mission mode. A total of 2,49,334 homesteadless families have been identified in the State, and all of them shall be provided with house-sites within a span of three years. As per the official statistics (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*), during the year 2006-07, up to March, 2007, 98774 homesteadless families, which included 46196 ST, 25721 SC and 26857 other categories were provided with housesites under the aforesaid Project "Vasundhara". But pitifully enough, as in other schemes, there is no

disaggregated data showing how many women-headed families among the total received the house-site benefit.

Distribution of Government Surplus Land for Agricultural Purpose:

In order to improve the economy of the weaker sections of the society and to boost agricultural production in the State, ceiling surplus land upto 0.7 standard Acre is being allotted free of salami to the landless persons for agricultural purpose since the year 1974-75. This item has also been included under 20 point programmes being implemented by Govt. of India.

Since inception till the year, 2006-07 upto 31.3.2007 a total area of Ac.159384.329 of ceiling surplus land has been distributed among 142616 landless beneficiaries (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*). The category-wise details are given below:

<u>No. of Beneficiaries</u>	<u>Total Land distributed.</u>
ST	52,934
SC	48,704
Others	40,978

As noticed from the above table, there is no disaggregated data showing the gender-wise break-up of land distributed to the landless families.

Distribution of Government Wasteland for Agricultural Purpose

Since 1974-75 till the end of March,2007, 7,36,491.989 acres of Government wasteland was distributed among 7,78,469 landless families. This figure includes 3,84,364.264 acres of land given to 231630 ST families, 1,75,57.922 acres to 104235 SC families and 1,76,551.804 acres to 1,42,604 landless families belonging to other categories. (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*). One can notice the lack of gender concern in respect of this programme too.

Distribution of Bhoodan Land:

This Bhoodan Yagna Samiti working in the State was reconstituted with a Chairman, a Vice-Chairman and nine other Members vide Revenue Department Notification No. 8647 dtd. 1.3.2004. According to the report received from the Bhoodan Yagna Samiti an extent of Ac6,38,706.50 dec. of land was collected as donation, out of which Ac.5,79,994.21 dec. of land were already distributed amongst 1,52,852 landless persons. The Samiti is taking steps to distribute the balance Ac.58,722.29 dec. of land as quickly as possible after verification of present status of such undistributed land. (*vide Annual Report 2006-2007 of the Department of Disaster Management and Revenue, Orissa*). However, due to lack of a gender concern among both Govt officials and functionaries of Bhoodan Yagna Samiti, it is impossible to know how many women headed households or destitute women as such have received the benefits of Bhoodan land.

Joint Titling of the Land Deed: It is quite often argued by both official think tanks and civil society groups that women's access to and effective control over land may be enhanced through joint titling of the land deeds. They think that joint titles to the land shall prevent the male spouses from arbitrarily selling away the land or house as and when they desired and thus ensure some sort of control by the female partners over the transactions around family property. In line

with this thinking the Section 7.8 of the recently announced National Rehabilitation and Resettlement Policy, 2007 has mentioned, “The land or house allotted to the affected families under this policy may be in the joint names of wife and husband of the affected family”. While such a provision has a definite prospect for improving the status of married women in the domestic sphere, it is not an unmixed blessing either. As we shall see a little later while discussing Bina Agarwal’s perception of women’s empowerment, this measure is rather limited in scope, and what ideally needs to be promoted are women’s independent land rights in place of joint titling. Coming to the context of Orissa, the principle of joint titling already accepted at the level of Government of India, is yet to be incorporated in policy documents in Orissa.

TOWARDS INDEPENDENT LAND RIGHTS OF WOMEN

Bina Agarwal, who teaches at Delhi’s Institute of Economic Growth and who has been a part of Planning Commission’s recent exercises on gendering the development has emphasised all along the single most important principle dear to her heart that, neither employment nor joint entitlement but independent right, ownership and control over property as such is the surest key to her emancipation from patriarchy. Bina’s wellknown book *‘A FIELD OF ONE’S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA’ 1994 reprinted in 1995, 1996 and 1998* strongly pleads for “Women’s direct ownership and control of land can be crucial for enhancing their well-being, their bargaining power within and outside the household, and their overall empowerment. And it can have wide-ranging implications for poverty alleviation and production efficiency”. In particular, the book outlines the effects of a lack of control over land and property on the lives and livelihoods of women across South Asia. It examines the property rights women enjoyed historically, traces changes over time, and their rights under contemporary law. It analyses the factors underlying a gap between law and practice and between nominal ownership and effective control. It examines forms of women’s covert and overt resistance. And it spells out alternative scenarios and policy options that could facilitate women gaining effective rights in land and other property. In another book, *‘Are We Not Peasants Too? Land Rights and Women’s Claims in India by Bina Agarwal, 2002’* she observes that there are three principal means through which ownership over land, the most potential and durable resource for a woman in India can pass to her, namely inheritance, Governmental transfer and market, but there exist formidable obstacles against her in respect of each.

Women’s Inheritance of Land Rights

Bina argues, as regards inheritance, the present legal system despite showing a charitable gesture here and there towards the need for gender equality in property entitlements is in fact heavily male biased and whatever legal reforms favouring women’s inheritance were effected are yet to find any reflection at the ground level. Strange but true, the bulk of women themselves in both rural and urban India are still largely unaware and even indifferent about the rights, which were granted to them by a reluctant State under the unavoidable pressure exerted by the women’s movement. In respect of the next source of women’s land rights i.e. Government programmes for land allocation, there are three avenues, such as land reform measures, resettlement and rehabilitation of the project displaced persons and above all poverty alleviation schemes. Here also, one feels disappointed to witness that whatever share of the allocated land was bestowed to the women in the name of joint title has ultimately passed on to the real control of the husbands and other male members of the concerned families. The third source i.e. market, which has of late emerged as a big field for the transactions over land puts up as such no formal restriction from its side to welcoming and accommodating the women of any caste or class into its midst, but the actual condition of the vast mass of India’s rural and tribal women is so miserable and

beneath the critical level that they can hardly afford to play the rules of its game and avail its benefits.

Government-orchestrated land transfer

The issue of land transfer to women beneficiaries under different Government orchestrated programmes deserves treatment at some length. As already mentioned, these transfers can take place through land reform measures, resettlement package for those displaced by large dams and other projects, or antipoverty programs of the Central or a State Government. Irrespective of the programme under which the transfers occur, the land is invariably allotted in the name of male members, even if the latter belong to the communities, which are traditionally bound to a system of matrilineal inheritance. Bina Agarwal points out that such a bias can be noticed all across the country, no matter which political party is in power. In West Bengal, for instance, in the late 1970s and early 1980s the Communist Party of India (Marxist), which was then in power carried out “Operation Barga”, a major land reform initiative, which, sought to secure the rights of tenants first of all by a systematic registration of their names. However, they primarily registered men. Land distributed to the landless also passed almost entirely to men. Although the laws in place allowed by way of exception the transfer of land to single-women households and those women who were divorcees, deserted, or having no adult sons, only a few women among the whole lot could practically be enabled to acquire the titles.

She further observes, the male bias has a long history. Historically, even in peasant movements in which women were significant participants, they were not recognized as independent claimants to land. The Tebhaga and Telangana movements of the 1940s are cases in point. Exceptions to this pattern are few and far between, one being the Bihar’s Bodhgaya struggle of 1970s, in which women demanded and received independent land shares in two villages. In the more recent period, a few of India’s Five Year Plans have given some recognition to women’s land claims. For instance, the Eighth Five Year Plan (1992–97) directed state governments to allot 40 percent of ceiling surplus land to women alone and the rest jointly to both spouses. The Ninth Five Year Plan (1997–2000) went further in terms of policy formulation. In its chapter on poverty alleviation the Plan incorporated many of Bina Agarwal’s recommendations on promoting group rights and collective farm management for women, along with providing infrastructural support to women cultivators. It also recognized the need for collecting gender-disaggregated information on land ownership and use. The crunch, however, lies in whether state governments are willing to implement these recommendations. Also the ceiling surplus land available for distribution is extremely limited: it came to only 0.56 percent of India’s arable land at the time of the Eighth Plan and today it comes to less than 0.2 percent of the country’s arable land. Hence while it is important to reduce biases in government land transfers, and thereby also to send the message that women’s claims deserve attention, in terms of actual land area such transfers can go but a small way in improving Indian women’s land status.

Option of entering into land market

It is therefore imperative that as a supplementary measure, we need to explore the third source of land rights for women, i.e. through market or in other words lease or purchase of land that can secure increasing income levels to a woman or a group of women on a durable basis. Agarwal however warns, the weight of this option will depend on financial, institutional, and infrastructural support to women extended by Governmental and non-Governmental quarters. In itself, this is a limited option since individual rural women seldom have access to adequate financial resources for this purpose. Also, in terms of purchase, rural land markets are often constrained and land is not always available for sale. Without relying solely on this option of

investing in land, it may be looked upon as an additional and chance avenue for empowerment of poor and rural women.

Orissa: Challenges Ahead

The Constitution of India safeguards the rights and privileges of women, confers equal rights and opportunities on men and women in the political, economic and social spheres and prohibits discrimination against any citizen on the ground of sex, religion, race, and caste, etc. Guided by these constitutional principles and directives and to safeguard the interest of women a National Perspective Plan for Women (1988-2000) was drafted by the Department of Women and Child Development, GOI with the aim of providing equity and social justice for women. At the international level, India is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It has been widely realized that to remove gender discrimination in accessibility and ownership of resources, including productive resources such as land, there is a need to change land-related laws. Therefore, for the first time, the Ninth Five Year plan (1997-2002) document included a section on 'Gender and Land Rights' and emphasized the need for land ownership by poor women. It has also pointed-out that the gender inequalities inherent in land inheritance laws and ceiling laws deserve necessary correction at the earliest. A Report of the 'Committee for Gender Equality in Land Devolution in Tenurial Laws' (1998) gives detailed information for a number of states on this aspect. Meanwhile about a decade has passed by, but the general pace of response by the States has been slow and sluggish, and the worst among them is Orissa, where no visible effort of any kind has been noticed in a remedial direction.

It is worth noting that the *Centre for Rural Studies, Lal Bahadur Shastri National Academy of Administration, Mussoorie* conducted a two-day workshop on 'Gender Discrimination in Land Ownership' on 5-6 February 2004 at the behest of Ministry of Rural Development, Govt of India. Eminent bureaucrats, academicians, advocates, researchers, and social activists attended the workshop. With a view to removal of the gender disparity in land rights, the workshop had drawn up a group of recommendations. Those from among them, which are relevant in the context of Orissa are reproduced below with a hope that both Government and civil society groups shall take them up for their eventual actualisation.

1. Agricultural land is a major source of livelihood and sustenance for a large number of rural population, particularly women. However, laws relating to land favour men and are discriminatory to women. To ensure accessibility and ownership of land rights to women, Ministry of Rural Development, Govt. of India has issued an instruction to all the states that 40% of agricultural land settled under land reform programme should be exclusively in the name of women. In the remaining cases, the allotment may be jointly in the name of husband and wife.

2. The provision of 40% of land in the name of individual women should have specific provisions for widows, separated/ divorced, deserted and unmarried women. The proportion for each category can be fixed based on the composition of population of each category out of the total population.

3. Sensitization of government officials who are directly involved in implementation of land laws is necessary to change their patriarchal mindset. It is important to make them aware that land is an important means of livelihood and sustenance for a large number of rural women. It is, therefore, essential to provide land rights to women.

4. It was further felt that one of the reasons for ineffective implementation of the instruction of Government of India for distributing land in the name of women is due to the fact that some states may not whole-heartedly enforce the Central Govt. instructions. This ultimately leads to the non-compliance. The programme can be implemented effectively by way of a notification/state order/ standing order by every state administration. In case of non-implementation or ineffective implementation of the programme, bureaucrats needed to be made accountable.

5. Need for an enactment of law so that implementers can be made accountable.

6. The existing laws relating to land ownership and accessibility are gender discriminatory. This has been revealed by various studies and reports such as “A Report of the ‘Committee for Gender Equality in Land Devolution in Tenorial Laws’” prepared by Prof. Bina Agarwal and others containing specific recommendations regarding changes to be made in the legal statues. Brief summary of the recommendations is as follows:

- i. Amendment of the tenorial laws by state governments to ensure gender equality.
- ii. Amendment of the main inheritance laws (the HSA and the 1937 Shariat Act) so that (a) all property is treated uniformly. This would mean bringing agricultural land under the purview of their respective laws for both Hindus and Muslims, and abolishing joint family property in the HSA. (b) Equal shares of males and females in all property.
- iii. Partial restriction on the rights of testation as the existing provisions fully ignores the interest and rights of women. At least a part of the testation should be made mandatory for women.
- iv. Ensuring that if women relinquish their claims (as they often do in favour of brothers) the relinquishment is done through a formal deed of law rather than informally. This would provide some protection to women against their shares being taken over by relatives, by default.
- v. Due to poor economic conditions of rural women, a provision could be made to reduce the cost of such formal deeds.
- vi. The order of devolution of agricultural land should specify order of heirs. Widow, married and unmarried daughters along with sons should be included in the first category of heir in the devolution process.

7. Lending legitimacy to the argument that the discrimination in inheritance laws in respect of agricultural land is a direct violation of international law and UN Convention such as CEDAW to which India is a signatory. This could be reworked and discussion can be initiated on a comprehensive bill to be brought forward to protect the rights of women.

8. The language of the Land Reforms Act, which is in deference to the prevailing cultural ideology, prioritizes sons and usually excludes women in matters of inheritance. Social justice demands elimination of all such language usage. Explicit provisions favouring women would lead to creation of more confidence among them and initiations in seeking the benefits of law. And it could generate a psychology that women are co-sharers in inheritance and should not be left on the goodwill of men.

9. The role of law in the area of agricultural land inheritance has not operated to empower women, be it widows or daughters. There clearly seems to be limitations of law. In case of daughters/sisters also, custom of village exogamy makes them handicapped in inheriting the land rights. The question to be addressed to is how can law ensure the rights of the individual without at the same time alienating her from the community.

10. Generally women are not involved in decision making processes related to land management including probate process and when they are involved they lack the necessary skills or opportunities to assert their land rights existing under the different laws. The system of registration of title deeds and other documents should therefore be effectively implemented. And in the process of land registration, women's rights and their involvement must be ensured.

11. To make women effective landowners and managers, it is necessary that women functionaries should be appointed at the grass root level in the revenue and agricultural departments.

12. There is an urgent need to create and spread legal awareness of gender related land laws and government policies on land ownership among men and women. This awareness should not be limited to just educating women, but should also aim at empowering their lives.

13. Wherever village development committees (VDCs) are formed under the Joint Forest Management, a specific percentage of women besides scheduled castes, scheduled tribes and landless need to be given representation.

14. Gender discrimination in the ownership of resources including land further leads to the discriminatory practices in other spheres such as education, health, skill and ability to gain employment, etc. To combat these problems such issues can be included in the syllabus of school children. This will create awareness and help to remove the gender discriminatory practices in general and in ownership of productive resources in particular.

15. One of the basic purposes of the land reform programme has been to provide equitable distribution of land resources to the rural people including women. The government should therefore provide schemes for purchase of land through loans under poverty alleviation programmes to women's self help groups and women preferably single women. This would enable landless or near landless women to have small plots of agricultural land in their own names. Women can cultivate land on lease owned by SHGs, individually or collectively. This is one way through which women can have some access to land.

16. Injustice to women's rights has given rise to more social problems than one recognizes. Increasing dowry demands is one of them. It is a well-known fact that the practice of dowry does not give any thing to the girl whereas inheriting land empowers her economically. State specific studies from different parts of India indicate a strong negative correlation between dowry and women's rights to land. Dowry is also becoming a source of land alienation as part of the land is generally sold or mortgaged to provide for the dowry. The expenditure for dowry thus impacts on the issue of land and land rights, as they are closely related with each other. Therefore, the way the dowry prohibition act is implemented becomes an important area of concern. Something drastic needs to be done to curb dowry. If women are given land rights on marriage, they will have their share of land with them and this would have an impact in terms of

reducing demands for dowry. Coparcenary right should be allowed to daughters in agricultural land.

17. In any large-scale project involving displacement, land is usually allotted to the adult male head of the household. This is a gender discriminatory practice. It should be ensured that the policy is gender sensitive and takes into account the interest and rights of women. Women, particularly marginalised ones, who are affected/displaced by development programmes, needed to be given priority in land allocation/compensation under Resettlement and Rehabilitation package.

18. The concept of women's land ownership should not be restricted only to agricultural land rather it should include right to residence also. There are cases when due to family violence or marital discord a woman stands outside the house and has no place to go. Sometimes women are denied their rights as the man claims not to be married. Recommendations of Law Commission Report clearly speak of women's right to residence as both married and unmarried daughters, their right to the ancestral house and to ask for partition right. The distinction between right to agricultural land and right to residence should be abolished and should be treated in the same manner, as the existing laws contradict the basic tenets of the constitution. Therefore the fundamental duty is to bring it in consonance with the constitution.

19. In case of divorce, a woman should be entitled to half of the landed property. Similarly, the concept of 'community property' needs to be adopted so that husband and wife are jointly treated as owners of marital property. This change will help to make women effective owners and controllers of property and shall help to stem their disinheritance from property. Under most community property systems, the wife is deemed as the automatic owner of one half of the community property, and thus, inherits her portion. Because she is already the owner of the property during her husband's life, he has no right to dispose of her half share of the community property by gift to his sons or by drafting of a will.

20. To have a clear picture of gendered practices in land ownership and assess the impact of land reform policy on women's status, maintenance of sex segregated data should be made mandatory for all types of land- records of the revenue department. It should include indicators such as land ownership, land holdings, land use pattern, area operated and extent of tenancy, etc. This process could be facilitated by computerization of land records.

21. PRIs may be linked with legal aid cells so as to ensure that women who bring their land related problems to the gram panchayats or to other legal redressal forums have ready access to legal advice and services.

22. The term 'land to the tiller' introduced during the inception of land reforms programme often refers and relates to male cultivators only. With the increasing feminization of agricultural activity, a large number of rural women in India are engaged in the agricultural sector. However, they have no accessibility to, and ownership rights in land or any other productive resource and they are not referred as cultivators. Similarly, lack of owning productive resources such as land, also creates hindrance in accessibility of various govt. programmes. The recent Government policy of issuance of Kisan credit cards usually to male farmers is one such instance. This is based on the definitional notion that only the male head of the household is the

owner of agricultural land. There is a need to replace the concept of 'land to tiller' with 'land to the cultivator'. It is important to highlight and challenge such nuances.

23. In the schedule areas, land related issues are supposed to be governed by customary laws. These customary laws are not gender just. The customs, which are an impediment in building a gender just society need to be reviewed. An intensive survey of the agricultural land of those districts that are still left unsurveyed, preparation of cadastral maps, and maintenance of records of land rights, and tenancy, etc. need to be undertaken. There is an imperative need to Identify, amend and redefine the prevailing customary laws on land and inheritance on the principle of gender equity, which at present are gender discriminatory.

24. Competent authorities should be specified who would issue documents certifying different types of land under occupation of a person/family/clan, etc. granted to her/him.

25. Other land reforms measures such as tenancy reforms, imposition of land ceiling, land distribution and other associated reforms can be undertaken once these initial measures are implemented.