

Chapter-2: Situating the Tribals in Orissa

2.1 Size of ST Population in Orissa:

As seen from the table below, in 2001 census the STs and SCs together constituted about 39% of Orissa's total population, out of which former accounted for more than 22%, while the latter more than 16%. There are 62 Tribes including 13 Primitive Tribes. The occupational pattern among the STs ranges from hunter and food gatherer to settled agriculture. Over the decades the percentage of STs and SCs of the total population has remained more or less same. In case of STs, it reached the peak in 1971 (23.11%) and the lowest in 2001 (22.13), the difference being marginal. A puzzling question may arise here- how is it that the percentage of ST population has been maintained more or less at the same level in the face of the disturbing fact that infant and maternal mortality coupled with premature mortality due to large incidence of morbidity is quite high among the tribals? From repeated conversations with people belonging to the tribal families held over years, it was revealed to social activist Sri Chitta Behera (presently Orissa Coordinator of the Study on Displacement) that at the present stage of demographic and socio-economic development of the tribal communities in India, the trend of producing more children is an ethnically inherited defense and response mechanism inbuilt into the tribal life process. The tribal parents knowing fully well that survival chance for their offsprings is low and uncertain for reasons beyond their control tend to produce as many children as they can in course of their sexually active life. Such a tendency, which has been ingrained and persisting among the tribal communities since perhaps the time when they were driven away from the plains to the hills to lead a distinct, communitarian way of life on their own, may be checkmated to the degree the rate of survival of the new-born and infants grows and scale of pre-mature mortality of mothers and adults caused by high propensity to morbidity decreases.

Table 2.1: ST & SC Population in Orissa from 1971 to 2001

Scheduled Tribe and Scheduled Caste population in Orissa.

(Population in lakh nos.)					
Census year	Total population	Scheduled Tribe population	Percentage to total population	Scheduled Caste population	Percentage to total population
1	2	3	4	5	6
1971	219.45	50.72	23.11	33.11	15.09
1981	263.70	59.15	22.43	38.66	14.66
1991	316.60	70.32	22.21	51.29	16.20
2001	368.05	81.45	22.13	60.82	16.53

Source : Census of India.

(Quoted in ECONOMIC SURVEY 2005-06, Orissa)

2.2 LIST OF SCHEDULED TRIBES OF ORISSA

The following is an official list of 62 categories of Scheduled Tribes living in Orissa. As can be seen from the table certain categories of Scheduled Tribes comprise more than one sub-tribe.

Table 2.2 List of Scheduled Tribes of Orissa

Sl No	List of Scheduled Tribes notified (after addition/deletion) as per the Scheduled Castes and Scheduled Tribes Order, 1950 as amended by Modification Order, 1956, Amendment Act, 1976 and The Scheduled Castes and Scheduled Tribes Order (Amendment) Act 2002 No. 10 dated 8.1.2003 of Ministry of Law & Justice republished by the Notification No. 7799/ L dated 7.6.2003 of Law Deptt, Govt. of Orissa
1	Bagata, Bhakta
2	Baiga
3.	Banjara, Banjari
4.	Bathudi, Bathuri

5.	Bhottada, Dhotada, Bhotra, Bhatra, Bhattara, Bhotora, Bhatara
6.	Bhuiya, Bhuyan
7.	Bhumia
8.	Bhumij, Teli Bhumij, Haladipokhria Bhumij, Haladi Pokharia Bhumija, Desi Bhumij, Desia Bhumij, Tamaria Bhumij
9.	Bhunja
10.	Binjhal, Binjhar
11.	Binjha, Binjhoa
12.	Birhor
13.	Bondo Poraja, Bonda Paroja, Banda Paroja
14.	Chenchu
15.	Dal
16.	Desua Bhumij
17.	Dharua, Dhuruba, Dhurva
18.	Didayi, Didai Paroja, Didai
19.	Gadaba, Bodo Gadaba, Gutob Gadaba, Kapu Gadaba, Ollara Gadaba, Parenga Gadaba, Sano Gadaba
20.	Gandia
21.	Ghara
22.	Gond, Gondo, Rajgond, Maria Gond, Dhur Gond
23.	Ho
24.	Holva
25.	Jatapu
26.	Juang
27.	Kandha Gauda
28.	Kawar, Kanwar
29.	Kharia, Kharian, Berga Kharia, Dhelki Kharia, Dudh Kharia, Erenga Kharia, Munda Kharia, Oraon Kharia, Khadia, Pahari Kharia
30.	Kharwar
31.	Khond, Kond, Kandha, Nanguli Kandha, Sitha Kandha, Kondh, Kui, Buda Kondh, Bura Kandha, Desia Kandha, Dungaria Kondh, Kutia Kandha, Kandha Gauda, Muli Kondh, Malua Kondh, Pengo Kandha, Raja Kondh, Raj Khond
32.	Kissan, Nagesar, Nagesia
33.	Kol
34.	Kolah, Loharas, Kol Loharas
35.	Kolha
36.	Koli Malhar
37.	Kondadora
38.	Kora, Khaira, Khayara
39.	Korua
40.	Kotia
41.	Koya, Gumba Koya, Koitur Koya, Kamar Koya, Musara Koya
42.	Kulis

43.	Lodha, Nodh, Nodha, Lodh
44.	Madia
45.	Mahali
46.	Mankidi
47.	Mankirdia, Mankria, Mankidi
48.	Matya, Matia
49.	Mirdhas, Kuda, Koda
50.	Munda, Munda Lohara, Munda Mahalis, Nagabanshi Munda, Oriya Munda
51.	Mundari
52.	Omanatya, Omanaty, Amanatya
53.	Oraon, Dhangar, Uran
54.	Parenga
55.	Paroja, Parja, Bodo paroja, Barong Jhodia Paroja, Chhelia Paroja, Jhodia Paroja, Konda Paroja, Paraja, Ponga Paroja, Sodia Paroja, Sano Paroja, Solia Paroja
56.	Pentia
57.	Rajuar
58.	Santal
59.	Saora, Savar, Saura, Sahara, Arsi Saora, Based Saora, Bhima Saora, Bhimma Saora, Chumura Saora, Jara Savar, Jadu Saora, Jati Saora, Juari Saora, Kampu Saora, Kampa Saura, Kapo Saora, Kindal Saora, Kumbi Kancher Saora, Kalapithia Saora, Kirat Saora, Lanjia Saora, Lamba Lanjia Saora, Luara Saora, Luar Saora, Laria Savar, Malia Saora, Malla Saora, Uriya Saora, Raika Saora, Sudda Saora, Sarda Saora, Tankala Saora, Patro Saora, Vesu Saora
60.	Shabar Lodha
61.	Sounti
62.	Tharua, Tharua Bindhani

[Source: ST & SC Development, Minorities and Backward Classes Welfare Dept. Govt of Orissa (http://www.orissa.gov.in/stsc/list_of_communities.htm)]

Among the above mentioned 62 groups of tribes there are 13 Primitive Tribe Groups in Orissa such as Chuktia Bhunjia, Birhor, Bondo, Didayi, Dongria-Khond, Juang, Kharia, Kutia Khond, Lanjia Saura, Lodha, Mankirdia, Paudi Bhuyan and Saura, and their population as per 1991 census amounted to 61148. (Source: **REPORT OF THE STEERING COMMITTEE ON EMPOWERING THE SCHEDULED TRIBES FOR THE TENTH FIVE YEAR PLAN (2002-2007), GOVERNMENT OF INDIA, PLANNING COMMISSION, NEW DELHI, OCTOBER, 2001**)

2.3 Scheduled Areas in Orissa:

In legal parlance, by the word 'tribal area' we should mean a Schedule-V area, as declared by the Government of India on the basis of population census. The table below, extracted from the latest Orissa Economic Survey 2005-06 lists out the 13 districts of Orissa from out of 30, which have been declared to be having Schedule-V areas within their respective jurisdictions. Though the table is based upon the 1991 census, the list of Scheduled Areas remains valid to this day, since a little change has been noticed in terms of ST population in the census of 2001 compared to the previous census. The tracts of every such district which have been declared as scheduled areas for the reasons of preponderance of ST population are also mentioned in the table.

Table 2.3: Schedule-V Areas in various districts of Orissa
Scheduled Areas of Orissa (1991 Census)

Sl. No.	District	Tracts included in Scheduled Area	Area of the tracts (sq km)	Population within the Sch. Area		
				Total	ST	SC
1	2	3	4	5	6	7
1	Mayurbhanj	Whole district	10416.80	1884580	1080828	131765
2	Balasore	Nilagiri block	223.80	106488	53080	10780
3	Keonjhar	Keonjhar tahasil	6350.20	646857	354605	52498
		Champua tahasil	1585.40	328437	152986	32487
4	Sambalpur	Kuchinda tahasil	2367.30	225086	125741	27263
5	Sundargarh	Whole district	9921.40	1573817	798481	138157
6	Gajapati	R. Udayagiri	2498.80	287812	195310	12525
7	Ganjam	Sorada tahasil	912.00	142849	12852	29076
8	Kalahandi	Th. Rampur block	323.80	55777	31042	14170
		Lanjigarh block	999.70	80947	29832	14189
9	Koraput	Whole district	8534.00	1026458	519006	138107
10	Rayagada	Whole district	7584.70	713984	400097	101956
11	Nabarangpur	Whole district	5135.30	846659	467919	127800
12	Malikangiri	Whole district	6115.30	425445	249057	84270
13	Phulbani	Kandhamal tahsil	2017.80	160205	76587	36180
		Baliguda tahasil	5828.10	386076	204799	83319
Total			89813.80	8870884	4782020	1014542
(% to State total)			(44.70)	(28.02)	(67.72)	(19.78)
State Total			155707.00	31659736	7032214	5128314

(Source: Orissa ECONOMIC SURVEY 2005-06)

2.4 PESA 1996-

A special legislation called THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 No.40 OF 1996 (24th Dec, 1996) is applicable to Schedule-V areas and all the public servants right from Governor down to a Secretary Gram Panchayat are bound to abide by its provisions while conducting themselves in relation to these areas and their ST populations. The salient provisions of this brief but unique law, which are relevant to our present study are summarized below-

- State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;
- A village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs;

- Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;

- Every Gram Sabha shall-

- approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

- the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas;

- the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas;

- the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

- while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with-

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe; (iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

- The State Legislations may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha; and

- The State Legislature shall endeavour to follow the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district levels in the Scheduled Areas.

It is important to keep the above mentioned provisions of PESA Act, 1996 in mind, especially those relating to the powers of Gram Sabha in respect of land acquisition for any developmental

project, formulation of R&R plan, mining lease, control over natural resources including minor forest produce, socio-cultural-religious customs and traditions, land alienation from tribals, money-lending, prohibition, marketing, and above all functioning of all offices and public servants at all levels within its jurisdiction.

But ironically enough, we have seen in course of this study that the above provisions were practically violated with impunity by the land acquiring administration at every level, and only for the sake of a formal compliance to the mandatory provisions of this Act, manipulations of every sort including forgery of the signature and thumb impressions of tribal villagers were resorted to by a nexus of vested interests comprising the officials, company personnel and some gullible tribal upstarts.

2.5 How PESA needs to be administered in a State:

As is well known, for the purposes of governance, the Constitution has accorded the status of Scheduled Areas to those areas of the country, which are marked by density of tribal population. Again there are two types of such Scheduled Areas known as Schedule-V and Schedule-VI. The Schedule-VI areas are located only in North East region, while Schedule-V areas are widespread across different States of the country. As regards Orissa, more than 22% of its population belongs to the Scheduled Tribes, which include primitive tribal groups too. Though each of the 30 districts of Orissa has tribal population, only 13 districts have Schedule-V areas. Among these 13 districts, 6 districts are entirely covered under Schedule-V areas, such as Mayurbhanj, Sundargarh, Koraput, Nawarangpur, Malkangiri and Rayagada) while remaining 7 are partially covered by them (such as Balasore, Keonjhar, Sambalpur, Gajapati, Ganjam, Kalahandi and Phulbani. (*Source: Orissa Economic Survey 2005-06*)

Because of the preponderance of indigenous or tribal population in the Scheduled Areas, there are special provisions made in the Fifth and Sixth Schedules of the Constitution for administration of these areas. For instance, as per the Fifth Schedule of the Constitution, there shall be a Tribes Advisory Council in each State having Scheduled Areas to advise the Governor on matters relating to the administration of these areas. And the Governor of each such State shall annually, or as and when so required make a report to the President regarding the administration of the Scheduled Areas in that State. As per Section 5 of the Schedule-V (Law applicable to Scheduled Areas), the Governor of a State has been entrusted with special powers to ensure that no law even if enacted by the Parliament or a State legislature apply fully or partially to a Scheduled Area if the Governor considers it to be unsuitable for the purpose. Moreover, the Governor has the power to make and amend regulations as and when he feels it necessary to fulfill such aims inter alia as “to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area; and to regulate the allotment of land to members of the Scheduled Tribes in such area”. (*Source: Schedule-V of Constitution of India, 2001, Delhi Law House*)

2.6 PESA in Orissa:

It is also well known that in pursuance of this special power, the Orissa Scheduled Areas Transfer of Immovable Property Regulation 1956 was proclaimed. The latest amendment of this Regulation was made in 2002, making the law to prevent alienation of tribal land more stringent. Further, another important legislation concerning the Scheduled Areas, relevant to Orissa among others was passed by Parliament and came into force on 24th December 1996 i.e. ‘The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996’ or briefly PESA. It is a Central Act, which directed the concerned States to ensure synchronization and updating of their respective legal regimes post **73rd Amendment of Constitution** in accordance with the

letter and spirit of its provisions. Relevant to the present context is Section-4(i) of PESA, which reads, “The Gram Sabha or the Panchayat at the appropriate level shall be consulted before making any acquisition of land in the Scheduled Areas for development projects and before resetting or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level.” [Source: *The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996*]

But as a Study by Vasundhara (PESA: Myths & Realities, Experiences from Orissa) points out “The State of Orissa didn’t take the Central Act seriously. After a year- long struggle by tribal organisations and NGOs in the Scheduled Areas of the State the Orissa GP Act of 1964 was amended in December 1997. Three different Acts were passed in the Orissa Legislative Assembly i.e. the Orissa Gram Panchayat (Amendment) Act of 1997, the Orissa Panchayat Samiti (Amendment) Act of 1997 and the Orissa Zilla Parishad (Amendment) Act of 1997. A reading of the Orissa Amendment Acts suggests that the letter and spirit of the Central Act have not been properly respected”. (Source: ‘PESA: Myths & Realities, Experiences from Orissa’, A Study by a team of researchers Ms. Neera M. Singh, Shri Ashok Babu, Ms Rekha Panigrahi, Shri Prasant Mohanty and Shri Sudhir Pattnaik, VASUNDHARA, Bhubaneswar, Orissa, Supported by CIFOR, Indonesia, April, 2002)

The Government of Orissa not only ignored the quintessential message of PESA 1996 for giving more power and autonomy to the Gram Sabhas and Panchayats in the Scheduled Areas, but also gave contrary signals to its bureaucrats encouraging them thereby to continue to treat the tribals with apathy and neglect as before. Even if there occurred a political change in the State at the top level in the year 2000, that is, replacement of Congress Party by BJD-BJP Coalition as the ruling power, the old, ingrained overlord-like mind-set of the bureaucrats about the tribals persisted undiluted and coloured their action and response towards every manifestation of dissent or protest by the tribal groups. It is interesting to note that the Government played a nakedly double-standard role all through these years; on one hand, in order to maintain a tribal friendly image it continued to pay lip-service to PESA-like laws and on the other in order to push forward its aggressive agenda of industrialization it sought to brutally stamp out every trace of tribal resistance as and when it came on its way. The following instances from three districts having Schedule-V areas shall bring out the typical style in which the Government of Orissa was showing its split behaviour at grassroots level.

2.7 Flouting of PESA by District Collectors in respect of land acquisition:

How the District Collectors in Orissa have treated (or maltreated) PESA 1996 in respect of its binding provision for ‘consultation with Gram Sabha’ on land acquisition matters in Scheduled Areas has been recorded quite descriptively by Justice Shri S.N.Bhargava, former Chief Justice of Sikkim High Court in his Report on a civil society Tribunal on UAIL Project on Alumina Refinery that was held under his chairmanship on 1-3 October 2005 at Kashipur in Rayagada district, Orissa. The Tribunal had other such eminent persons as its members, Shri. Dileep Singh Bhuria, former MP and Chairperson of National Commission for Scheduled Castes and Scheduled Tribe from 1999 – 2004, Dr. K. Balagopal, a Human Rights Lawyer in the High Court of Andhra Pradesh, Prof Ramdayal Munda former Vice Chancellor of University of Ranchi, Ms. Ilina Sen a writer from Chhattisgarh and Visiting Professor at Mahatma Gandhi International Hindi University, Wardha, and Prof. S. Parasuraman, Director of the Tata Institute of Social Sciences, Mumbai. In course of their Orissa trip, the members of Tribunal did also visit Lanjigarh in Kalahandi district where the tribal villagers were continuing their battle against the Government’s forcible effort to displace them and ravage the Niyamgiri Hills to make space for the bauxite mining and establishment of alumina refinery plant by a foreign company Sterlite/Vedanta Ltd.

About the manner in which two Collectors themselves called the meeting of Gram Sabhas to procure their consent and what happened in the aftermath, the Report states, “Other depositions claim that during a meeting convened by then Rayagada Collector, Durga Madhab Mishra (IAS), on 30 December 2000, the Gram Sabhas of Maikanch, Kucheapadar, Kodipari, Tikiri, and Gorakhpur had given their written opposition to the project: this decision was submitted to the Chief Minister, the Prime Minister, and the President. The Tribunal notes that this meeting was convened two weeks after the police used excessive force to quell a local protest in Maikanch against the project, killing three men. However, despite these efforts to intimidate and terrify them into submission, the local people stood their ground and refused to consent to the project. The Rayagada Collector Pramod Meherda (IAS) convened a second meeting on 9 December 2004 in the villages of Ramibeda, Kendukhunti, and Talakorole - the three villages to be acquired in totality by UAIL - to elicit public opinion. Again, this attempt at consultation ultimately proved to be a farce. That day, nine to ten platoons of armed police - around 300 policemen - surrounded each of the three hamlets and did not allow residents of other hamlets within the same Ward and Palli Sabha to participate in the meeting. Consultation for the project cannot be confined to the three villages that will be displaced, but must also include residents of villages where agricultural lands are to be acquired, although village sites will remain intact. Under heavy police presence, community leaders consented to the project; afterwards, people in the villages were served liquor and meat. It is highly doubtful that these community leaders were truthfully representing their constituencies when giving their consent. The people living in these villages have consistently opposed the project since 1996”. Kalahandi district administration is reported to have adopted a similar ploy to coerce Gram Sabha to submission on 26th July, 2002 (*Source: Soumya Mishra, Development Induced Displacement: A Case Study on Lanjigarh, Orissa Institute of Rural Management, Jodhpur, 2005*). The Report of the Tribunal mentions about this episode thus, “The Tribunal's visit to the Lanjigarh in Kalahandi district where Vedanta/ Sterlite is fast completing construction of its bauxite project offered a similar story of the perversion of consent. Dai Singh Majhi of the Niamgiri Suraksha Samiti (NSS) told the Tribunal that when the District Collector of Kalahandi, Shaswat Misra, held a Gram Sabha meeting to obtain the people's consent, all 12 of the affected habitations boycotted the meeting. Yet, the Gram Sabha was still held and people from outside the area were brought in and prevailed upon the Gram Sarpanch to provide consent. As a result, homesteads were razed with bulldozer in the three villages of Kinari, Borbatta and Sindbahli, and the land was handed over to Vedanta/ Sterlite after residents refused to vacate their homes. The Dongaria Kondhas (a primitive tribal group) residing in numerous hamlets on the sides of the Niyamgiri Hills, that will become inhabitable after the mining commences, were not even provided with a mock consultation: they are so cut off from the world that they do not even know of the fate that awaits them. Then District Collector of Kalahandi reportedly told reluctant villagers of the three displaced villages that only the top six inches of the soil belong to the people and all the rest underneath belongs to the Government, which it will give to the person of its choice. This is no doubt a very ancient principle of English common law, which has been inherited, but it has also been modified in many ways, that the District Collector seems ignorant of, to incorporate some space for the will of the people, especially in the Scheduled Areas”. (*Source: Kashipur: An Enquiry into Mining and Human Rights Violations in Kashipur, Orissa- Report of the Indian People's Tribunal on Environment and Human Rights, Tribunal Headed By: Justice S. N. Bhargava (Retired) Former Chief Justice, Sikkim High Court, October 2006*)

Box 2.1:

Land acquisition for Vedanta at Lanjigarh leads to illegal Eviction of landless tribals

Almost 64 landless Kondh households (Scheduled Tribes) of the Jaganathpur Village had been cultivating Khesara no 186 categorized as Revenue land for the last 30-40 years. Encroachment cases for the cultivation had been filed by the Revenue Department against many of these people. The encroachment notices show that these Scheduled tribe persons have been in physical possession of these lands for at least last seven to eight years. However, the tribals claim that even their forefathers were cultivating the land.

Both as per the principle of adverse possession and as per the **Section 7(a) of Orissa Prevention of Land Encroachment Act, 1972**, such land should have been settled with the landless persons to the extent of one standard acre (equivalent to 4.5 acres of uplands). The last revisional Survey and Settlement of Lanjigarh block took place in the late eighties, and the tribals claim that when they tried to get the land regularized in their names, they were asked to pay bribes up to Rs. 5,000/- per acre, which they couldn't afford. Even after the settlement, they have been trying to get the land regularized through revenue department, but have been asked for bribes by the Revenue department personnel.

In 2003, instead of settling this land with the tribal cultivators cultivating these lands, the district administration summarily evicted these 64 families by force without any compensation, thereby taking away their main source of livelihoods. The land has been handed over by the district administration to Vedanta Alumina Ltd. for the construction of their rehabilitation colony. In law, this action violates not only the rule of adverse possession and Section 7(a) of OPLE, 1972 but it also it violates the protection provided to the Scheduled tribes in Schedule V of the Constitution and the **Section 3(iii) of the OSATIP (Orissa Scheduled Areas Transfer of Immovable Property) Regulations (1956)** by turning scheduled tribes "effectively" landless. The Section 3(iii) of OSATIP regulation (1956) provides a minimum benchmark of 2 acres of irrigated or five acres of un-irrigated land for ownership by scheduled tribes before any land in their possession can be transferred. By not recognizing their cultivation rights and by evicting landless scheduled tribe persons from the land cultivated by them for generations, the provision is violated.

(Source: 'A Socio-Economic and Legal Study Of Scheduled Tribes' Land in Orissa' by By Kundan Kumar and Pranab Ranjan Choudhary With VASUNDHARA Team Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, Bhubaneswar 2005 Supported By World Bank, Washington)

2.8 PUDR Report on fake consultation with Gram Sabhas:

The fact finding report by PUDR (People's Union for Democratic Rights) that visited Kashipur, Rayagada during 16-21 April, 2005 gave a more vivid picture of how the 'consultation' was organised by the district administration, a legal requirement in Schedule-V areas. "In order to pay lip-service to the Constitutional requirement that residents cannot be alienated from their lands in the Vth Schedule areas without their consent, the Collector is holding palli sabhas (hamlet meetings) with armed presence of 2-3 platoons of police. At D.Karal (Kashipur), the Palli Sabha, which accepted compensation for their land, was held with the police cordoning off the whole village. Villagers allege that in the meetings, they are not asked what they want; they are told what to do. With the threat of police or state action against them, the villagers are afraid to speak their mind in the meetings. And where they do, and question the mining or the validity of the compensation offered, they are made to shut up. The minutes of such meetings, bearing the decisions and resolutions are sometimes in English, their contents hardly ever explained to the village representatives before they sign it. In Puhundi Gram Sabha on 17 March (re. the Aditya Alumina project), residents were asked to sign on blank paper. The decisions of that sabha are as yet unknown to them".

2.9 Mockery of Public Hearing by State Pollution Control Board:

The PUDR report also mentions how the Orissa State Pollution Control Board had made a mockery of public hearing on environment impact of UAIL Project at Kashipur. "A similar requirement of the Orissa State Pollution Control Board led to a meeting at village Phulajuba of Kashipur on 27 November 2004. The notice was published on 25 October giving no details

whatsoever of the environmental threat due to the project or the result of any study in this regard conducted by the SPCB. The minutes of the meeting in English contain responses to the project by 18 persons—15 of them generally welcomed the project and 3 expressed specific fears. There is no attempt to gather the views of the entire gathering or hold a vote. The minutes disregard the specific fears mentioned and conclude that people approve of the project and provide vague and meaningless recommendations. The village representatives are made to sign without explaining to them the contents of the minutes” (*Source: PUDR Report on FINDINGS OF THE INVESTIGATION INTO THE IMPACT ON PEOPLE DUE TO THE ALUMINA PROJECTS IN SOUTH ORISSA, 16-21 April, 2005*)

Then the PUDR Report observed that in the case of UAIL, the government tried to bypass the requirement of gram sabha’s consent for 7 years. And a sham of gram sabha consent was being organised when the compensation had already been paid and the acquisition underway. All this made the entire exercise a farcical one, besides of course being a violation of the constitutional provisions. (Ibid)

2.10 Dubious Role of Sundargarh District Administration:

In Sundargarh district, where the entire area comes under Schedule-V, and where sponge iron units mushroomed at an exceptionally quick pace bringing in its trail the unbearable woes for the tribal communities in the form of displacement and damage to their agriculture and environmental, tribal villagers also expressed their vehement resentment against the administration’s rough-shod manner of imposing its pro-industry dictates on them. But just like their counterparts in Rayagada and Kalahandi, the district administration of Sundargarh played a similarly dubious role to grab the consent from the concerned Gram Sabhas in favour of the sponge iron projects. But when it failed, it went ahead unleashing a spree of repression against the tribal protestors. Mr. Nicholas Barla, an Advocate and a tribal rights activist has the following to say on how the Sundargarh district administration was behaving towards the tribals in a Schedule-V area, “The Sponge Iron Factories established by the Non-Adivasi industrialists with full co-operation from the district administrators have created havoc and unrest in the whole district. Since 1998, these Sponge Iron Factories were erected like mushrooms here and there. Not a single factory has been approved by the Palli Sabha/Gram Sasan and Gram Sabha as minimum requirement for social and economic development before such plans, programmes and projects are taken up for implementation as mentioned in “The Orissa Grama Panchayats (Amendment) Act 1997...The Nepaz Sponge Factory has been opposed since its inception. The administrators have allowed the industrialist to construct the factory illegally and unlawfully and issued notice to hold a Gram Sabha meeting on 25-08-2004 just to eye wash the public (Meanwhile half of the construction was already over). The Collector Mr. Suresh Kumar Vashisth IAS presided over the Gram Sabha. In the meeting the Sabha did not approve the plan. Several appeals and protest letters were being sent to different offices but no one would listen to the Adivasis. Police would secretly find out the leaders and book them under Cr.P.Cs stating that they were disturbing peace”. (*Source: Nicholas Barla, Advocate, Rajgangpur, Sundargarh Dist-Orissa in ‘Voices from the Adivasis of Sundargarh’*)

2.11 PESA More a Myth than a Reality:

The bitter experience of the tribals about how the District Collectors, who constitute the cutting edge of the administration, maltreated them has obviously given rise to a spate of questions among them about the very intentions of the State and its plethora of laws framed on the spacious rationale of tribal welfare. How to reconcile the apparently irreconcilable positions? On this problematic issue there is in fact a critical dearth of literature. But the scholars who made the

study 'PESA: Myth and Realities' have made an attempt to explain the phenomenon thus: "An important point which needs to be examined in the overall context of Scheduled Areas is the role of Governor. What is said in the Fifth Schedule of the Constitution on the role of Governor is in fact drawn from the different acts, which the British had enacted during their rule. Therefore, it should be recalled that, the role and authority the Governor used to enjoy was almost in absolute terms. Now, since elected governments are ruling everywhere this role of the governor has eroded considerably. The political realities, which govern the day-to-day governance in India, have reduced the role of Governor to that of an agent of the party or coalition in power at the centre. For all practical purposes the Governor is not in an autonomous position. He is 'Governor in Council' and he does not represent the person of the President but the "President in Council". Therefore, to expect the Governor to play a role in scheduled areas independent of these realities may engage us in good debate and discussions but will not yield any real benefit to scheduled areas. If the elected governments and the political parties don't recognise the fast deteriorating situations in scheduled areas and the role of natural resources in ameliorating the plight of the tribals, a ceremonial position of Governor may not be of much help to us".

Then the study reflects on the next important actor responsible for special treatment of the tribal areas in a State, the role of Tribes Advisory Council, which is supposed to advise the Governor, has been of no help to scheduled areas. It never meets on regular basis and has been of no use to tribals since its inception. This is true in all states having scheduled V areas.

As to how the PESA itself has not been of much help, the above Study goes on to say, "The most notable feature of PESA seems to be the provision of "consultation" with Gram Sabha on crucial matters such as land acquisition. Many people often forget that PESA has never made an exclusive provision like this for Gram Sabha alone. It has in fact said consultation with "Gram Sabha or Panchayats at appropriate level" which includes the Zilla Parishads. Therefore, the scope for manipulation at the State level has been already provided for in PESA itself, which was made good use of by the state governments like that of Orissa when they made their own laws with regard to this".

Further it continues, "The provision for "consultation" prescribed in PESA does not mean 'consent'. It does not explain what does this provision actually mean. There is also no mention about any punitive steps or legal instruments which the Gram Sabha or Panchayats at appropriate level can make use of in case these bodies are not consulted or if their decision is not honoured". (Source: *PESA : Myths & Realities, Experiences from Orissa, A Study by a team of researchers Ms. Neera M. Singh, Shri Ashok Babu, Ms Rekha Panigrahi, Shri Prasant Mohanty and Shri Sudhir Pattnaik, VASUNDHARA, Bhubaneswar, Orissa, Supported by CIFOR, Indonesia, April, 2002*)

2.11 Can PESA serve as a tool for tribal self-determination:

While there are so many loopholes in the provisions of Fifth Schedule and PESA and as well in subsequent amendments to Orissa Panchayat laws from the standpoint of tribal self-rule, a very pertinent question arises, can't the people's movement aiming at tribal empowerment and autonomy make use of such legal instruments to advance this cause? The experience has shown, yes. Because, to quote the above study again, "Whether there is a body of rules, principles or constitution to define or design the processes and procedures of governance or not, the actual governance normally does not depend much on the *written*. The *non-written* determines the process of governance at any level. The *non-written* includes interpretations, inferences and also adding meaning to it. PESA has not been able to stand above this reality, which guides democracies of our times". (Source: *PESA : Myths & Realities, Experiences from Orissa, A Study by a team of researchers Ms. Neera M. Singh, Shri Ashok Babu, Ms Rekha Panigrahi, Shri Prasant Mohanty and Shri*

Sudhir Pattnaik, VASUNDHARA, Bhubaneswar, Orissa, Supported by CIFOR, Indonesia, April, 2002). While the people's movement seeking tribal empowerment should definitely endeavour to plug the loopholes and render the concerned laws as foolproof as possible, has simultaneously to keep on harping on the real implications of the credo on special rights and special status, which the State has inscribed into its political banner out of a hegemonic disposition and interrogating the high-profile actors of the State on whom the Constitution has bestowed extraordinary powers and discretions to do positive discrimination for the tribal groups.

2.12 What should the Govt. do to honour PESA?

Under the circumstances, it is suggested that-

- In cases of all projects involving acquisition of tribal land in Schedule-V Areas of Orissa, where the Gram Sabhas have not voluntarily given their informed consent, decision should be taken at the State level to rescind them in deference to the provisions of Fifth Schedule of the Constitution and PESA, 1996;
- PESA, 1996 needs further amendment to ensure the informed consent (in place of mere consultation with) of Gram Sabhas in Schedules Areas for land acquisition for any developmental project, be it proposed by the Government or a private company;
- The Amendments of 1997 to Orissa Panchayat laws purportedly to bring them in correspondence with the provisions of PESA, which have however gone contrary to the avowed objective need be further amended to give power to Gram Sabhas in Scheduled Areas the ultimate power to say 'yes' or 'no' to a project proposal involving land acquisition and displacement; and
- The existing provisions in Schedule-V of the Constitution, such as those which relate to the role of President, Governor and Tribes Advisory Council be operationalised with propriety and sincerity.

2.13 Poverty among the STs of Orissa

As per the World Bank-sponsored Study made by Kundan Kumar and group, Orissa is the poorest State in the Country, here again poverty hits specific social groups and specific regions. While 33% of the general population live below poverty line and corresponding figure for SCs is 55%, a whopping 72% of the tribals are below poverty line. In South Orissa, where preponderance of tribal population is higher, nearly 87% of tribal population belong to BPL class. Being the poorest, the tribals show the lowest HDI (Human Development Index) in the State. Again, the tribals of north Orissa are better off than their southern counterparts. In South Orissa poverty has further been accentuated in last two decades notwithstanding its marginal decline in the rest of the State.

The above study poses the question, “**Is there a link between access to Land and other natural resources and poverty levels?**” and answers it in the affirmative. They present the following Table as a pointer to the truth.

Table 2.3 : Control of Land and Forests in 9 Tribal Districts of Orissa

Nature of Resource	Gajapati	Keonjhar	Kondhmal	Koraput	Malkangiri	Mayurbhanj	Nawarangpur	Rayagada	Sundargarh
Private Land	14%	28%	14%	29%	19%	37%	30%	20%	28%

Non-Forest Land	21%	35%	11%	47%	27%	21%	23%	43%	21%
Forest Land	64%	37%	75%	24%	54%	42%	47%	37%	51%

(Source: A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa, Kundan Kumar, Pranab Ranjan Choudhary, Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, supported by World Bank, 2006)

As per the above study, 66% of the total population in these 9 tribal districts are STs. But the State holds 3/4th of total land (Non-Forest Land+ Forest Land), 20% of the households are landless and another 65% own only 13% of the total land. In Gajapati district State owns a total of 86%, and 93% of households are either landless or small or marginal farmers. In Kondhamal, the situation is more precarious. The State holds more than 4/5th of total land, 26% of the households are landless another 41% of households own only 7 % of the total land. The average size of landholdings of STs across the State works out to 1.12 standard acres as against 1.43 standard acres for general castes. The average holding size for marginal ST landowners comes to only 0.44 std. acres.

The study further points out that the tribals lose away their ownership of land through Land mortgaging and Sale of land to non-tribals with and without permission. Besides, quite a large magnitude of tribal land had already been transferred to the non-tribals before the current prohibitions were in place.

As regards the practice of Land Mortgaging, 28% of households had mortgaged approximately 40% of their landholdings; Average loan amount was around Rs. 4,000/-per household; Most important reasons for credit were marriages and death ceremonies, bullock purchase and health contingencies. It was noticed that Laws regulating money lending to tribals were largely non-effective.

In Orissa sale of tribal land to non-tribals was completely prohibited in 2002. But prior to 2002, approximately 8,550 acres of land was sold to non-tribals with permission. More detailed study needed to understand extent of unofficial sale of land which seems to be concentrated in areas close to towns or in developed areas.

The above Study further pointed out that the record of rights was not properly documented ny the survey and settlement personnel. The land used for shifting cultivation by the tribals was not recognized in favour of the concerned tribals, but recorded as Government land. The communal tenure as and where it existed was also not recognized. The OGLS Act, 1962, provides for the settlement of land with SC and STs to the extent of 70% of the State land eligible for settlement. OPLE Act, 1972 provided for regularization of encroached land upto1 standard acres with cultivators. But there is no sincerity on the part of revenue officials to carry out these beneficial provisions meant poor tribal and dalit families. Similarly, the Orissa Forest Act, 1972 provides for settlement of the rights of local people and communities before declaration of any area as forest land. But in Orissa this is never carried out.

The Study by way of its recommendation called for proper holding of survey and settlement of all sorts of land in tribal areas; recognition of community rights and governance of land within customary boundaries in line with Bhuria Committee and PESA Act, acceptance of shifting cultivation as the basis for entitlement to patta, execution of Samata judgement; immediate distributon of Bhoodan and ceiling surplus land; and above all autonomy to PTG homelands.

(Source: *A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa*, Kundan Kumar, Pranab Ranjan Choudhary, Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, supported by World Bank)

2.14 Laws prohibiting transfer of tribal land to non-tribals in Orissa-

The Orissa Development Report, 2001 commissioned by Planning Commission noted inter alia, "The biggest problem of the tribals of India in general and Orissa in particular is Land Alienation. According to the latest statistics, nearly 88 per cent of the scheduled tribes are engaged in agriculture and a large section of the non-tribals are grabbing the land of the tribals, which they have been cultivating for ages. In addition to this, by manipulation, the non-tribals are also taking huge chunk of land on lease in the tribal areas. It is surprising to note that there are large number of instances in the State of Orissa where the land encroached by the tribals are also getting alienated in favour of the non-tribals. Thus, truly speaking the problem of land alienation among the tribals is very critical and is becoming more critical day by day. Although the State of Orissa have promulgated a legislation titled "*Orissa Scheduled Areas Transfer of Immovable Property (Scheduled Tribes) Regulation 1956*", land alienation is taking place in the tribal areas in very great numbers by violating the rules and by manipulation of the non-tribals. Since the tribals are thereby getting dispossessed from the land and getting further impoverished, Government of Orissa will have to enforce the regulation in a very meticulous manner in order to protect their interest". (Source: *Orissa Development Report, 2001, Planning Commission, Chapter -XI: AN OVERVIEW OF THE SCHEDULED TRIBES IN ORISSA*)

2.15 Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956 and Amendment in 2002

On pen and paper the Government of Orissa has been showing a great concern for mitigating the problem of land alienation among the tribals as evident from adoption of various legal instruments to checkmate it. But the reality at ground level is as dismal as before. At present, in Scheduled areas of Orissa, the transfer of private land from scheduled tribes and castes to non-scheduled groups is regulated by *Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation 1956 (OSATIP Regulation, 1956)*. Section 3(1) of this law originally stated that any transfer of property by a member of a scheduled tribe shall be null and void unless it is made to another member of a scheduled tribe or with the prior consent of the competent authority. It provided for restoration of land transferred illegally from tribals to non-tribals [Section 3(2)] and provided for a penalty of up to Rs.200/- acre of land for each year the property was held [Section 7(1)].

The above law was amended by Regulation I of 1997, wherein a clause had been inserted that no Scheduled Tribe shall be allowed to transfer land if after such a transfer the total land owned by ST will be reduced to less than one standard acre. The amendment also increased the maximum fine from Rs.200/- to Rs.2,000/- per acre per year.

Based on a number of studies which showed alarming trends in alienation of tribal land, the Govt of Orissa amended the Regulation once again by Regulation 1 of 2002 and has made the Act much more stringent. The salient features of the amended law are:

- Section (3) of the law states that any transfer of property by a member of a scheduled tribe in Scheduled areas to a non-tribal is not permitted.
- No tribal owner can transfer land to even another ST if the total land remaining with the tribal is less than two acres of irrigated land or five acres of un-irrigated land.
- All transfers from ST to non-STs between 4th October, 1956 and 4th September, 2002 shall be verified to ascertain their genuineness and the persons possessing such land

must prove to the sub-collectors concerned by 04/09/2004 that such transfer was carried out legally. Those who don't provide such proof shall be treated as illegal encroachers and the land shall be restored to the original tribal owners.

-Persons in fraudulent possession of tribal land shall be liable to fine up to Rs.5,000/- and two years of rigorous imprisonment.

In non-scheduled areas, the *Orissa Land Reform Act, 1960 (Section 22 and Section 23)* also forbids the transfer of patta land by a scheduled tribe person to any person who is not a scheduled tribe, unless written permission is obtained from the competent authority. The Orissa Land Reforms Act, 1960 also provides for penalty of Rs.200 per acre per year of land held illegally under this section. The strong protection provided in Scheduled areas under the amended *OSATIP Regulation, 1956 as amended in 2002* has so far not been extended to the non-scheduled areas where protection to tribal land is still governed as per the Orissa Land Reforms Act, 1960.

2.16 Existing Legislations and their performance need to be evaluated:

The performance of the amended OSATIP Regulation, 2002 hasn't been evaluated till date. It has no doubt instilled a fear among the non-tribals tempted to grab tribal land through very many devious means. But it also seems to have driven the incidence of land alienation underground through informal transactions such as debt mortgages and through benami transactions. In a welcome move the Government of Orissa has followed up with the local revenue officials to detect cases of land alienation and institute cases under sections 3(2), 3A and 7(2) of the amended Regulation. But the actual performance of the concerned officials at ground level needs to be ascertained through empirical studies. (Source: 'A Socio-Economic and Legal Study Of Scheduled Tribes' Land in Orissa' by By Kundan Kumar and Pranab Ranjan Choudhary With VASUNDHARA Team Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, Bhubaneswar 2005 Supported By World Bank, Washington)

2.17 Tribal Land Alienation through Development induced Displacement:

It is however strange that the very Government which being concerned with increasing alienation of tribal land enforced very many legislative instruments like OSATIP Regulation in post-independence period to prohibit the transfer of tribal land to non-tribals has at the same time allowed the acquisition of tribal land on a vast scale under colonial Land Acquisition Act, 1894 to feed numerous development projects including many run by private and foreign companies solely with a profiteering motive. As irony would have it, the Constitution allows at the same breath the operation of two sets of laws that have diametrically opposite motifs.

As a recent study points out, displacements through development projects, especially dams, mining and industrial projects have been an important reason for land loss of tribals. Almost all the dam projects are in undulating, hilly tracts and have higher proportion of tribal population. In many cases the official displacement figures are underestimates, and many of the major projects like Hirakud provide no figures about the tribal households displaced. Balimela, Upper Indravati, Upper Kolab, Machkund, Salandi, Subarnarekha etc. are some of the major dam projects taken up in scheduled districts, displacing tens of thousands of scheduled tribes households. Even dam projects in non-scheduled areas tend to have large number of Scheduled tribes as displaced. Most of the mines and industries in Orissa such as Rourkela Steel plant, HAL, NALCO Alumina Refinery and mines for iron ore, coal, bauxite, limestone etc. are also located in tribal areas. The casualness with which displacements of tribals have been treated is evident by the fact that out of 13 major dam projects, no data is available on ST families displaced in 7 projects. Similarly out of 10 major industrial projects, no data on proportion of STs displaced is available for seven projects. Except for a few irrigation projects, development projects have not provided land as compensation. Even where the principle of land for land compensation was accepted, often cash compensation was given as suitable land was not available. This has meant that Scheduled Tribes have lost their ancestral lands for which they

were provided legal rights. (Source: 'A Socio-Economic and Legal Study Of Scheduled Tribes' Land in Orissa' by Kundan Kumar and Pranab Ranjan Choudhary With VASUNDHARA Team Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, Bhubaneswar 2005 Supported By World Bank, Washington)

The above quoted Orissa Development Report, 2001 also considers the displacement of tribals by different development projects as a potent factor responsible for the large-scale incidence of landlessness among the tribals. It observed, "In recent times, a large number of development projects are coming up in the State of Orissa. Ironically, these development projects are coming up mainly in such areas where there is predominance of tribal population. Statistical figure indicates that more than 40 per cent of the displaced families in development projects in Orissa are the tribals. There are a large number of such Development Projects, which are in the pipeline and are likely to further displace many more tribals. It also has been revealed from a number of researchers that the tribal displaced families have by and large failed to restore their pre-displaced living standards in the post-displacement stage and they have become further impoverished as compared to their former standards of living. This is precisely because the tribal families are not getting compensated for the land, which they were possessing for ages, as they are encroached and have not been settled in their favour. Secondly the tribals are not getting successfully adapted to the non-forest based economy in the new place as they are getting dispossessed from the forest on which their life and living centres around". (Source: *Orissa Development Report, 2001, Planning Commission, Chapter -XI: AN OVERVIEW OF THE SCHEDULED TRIBES IN ORISSA*)

2.18 Further details on Tribals and Displacement in Orissa:

The tribals who are at the lowest rung of the society in India and Orissa have borne the brunt of development-induced displacement more than any other social group did in post-independence period.

Table 2.4 : Displacement through Irrigation, mining, industrial and conservation projects in tribal areas- 2006

Area acquired and villages affected by development and conservation projects in Orissa			
Serial No	Projects	Area acquired or affected (ha.)	No of villages affected
1	Irrigation- Dam projects (Major) Completed.	200423	900
2	Irrigation – Dam projects (Medium) Completed	14403	118
3	Irrigation – Dam projects (Medium) Ongoing	12160	92
4	Irrigation – Dam Projects (Major) Proposed	30233	113
6	Industries (All Types of Industries)	45358	176
7	Mines (All types of mine leases given out)	101947	NA
8	Wild life Sanctuaries and National Parks	811155	771
	Total	1215679	2170

(Source: *A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa*, Kundan Kumar, Pranab Ranjan Choudhary, Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, supported by World Bank, 2006)

In reference to the above table, it is worthwhile to mention that a group of scholars recently completed a study on the situation of Orissa's tribals in regard to use and ownership of forest and land resources. They have admitted that 'no clear data' was available from any official source. Therefore they had to collect and collate relying on a variety of other sources besides the official records. One of the findings they arrived at is that a shockingly massive magnitude of land and forests were acquired in the tribal areas of the State since the time of independence in 1947 upto 2006 and brought in its trail a huge scale of displacement and dispersion of tribal life throughout. And such displacement was occasioned by the State orchestrated developmental projects of various types. It was found that a total of 12,15,675 ha. (i.e. about 32,39,200 acres) of land have been acquired/affected in Orissa during 1947-2006 due to such projects. And in the process as many as 1170 tribal villages were displaced/affected due to such land acquisition. Further they hold that out of the total number of displaced persons in Orissa, 42% were tribals. In undivided Koraput district alone 7.42% of its area was subject to development induced displacement. Four major reservoirs of undivided Koraput district together submerged 528 sq.km and another 71 sq.km was acquired for HAL and NALCO. The Orissa Scheduled Area Transfer of Immovable Property Regulation, 1956 that prohibits the land transfer from tribal to non-tribal persons was given a good-bye by the Government officials in the process. The tribal families who didn't possess any patta over the land they had been cultivating for generations were not compensated at all. Those tribal families who depended upon common property resources for their livelihood had to suffer most following displacement. There were several cases of multiple displacement such as in Badagada, Sambalpur. Interestingly, the group found that an apparently innocuous and beneficial programme of the Government like plantations was also the source of tribal displacement in some cases. (Source: *A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa*, Kundan Kumar, Pranab Ranjan Choudhary, Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, supported by World Bank, 2006)

2.19 Further troubles apprehended for Orissa Tribals:

A lot of legal confusion and contradictions in fact surround the issue of land acquisition from tribals especially in the context of Orissa. The World Bank supported study, as quoted above brings out an interesting facet of such a legal tangle, "*The AP regulation (Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 as amended in 1970)* absolutely bans all transfers of land in

scheduled areas to non-tribals whereas OSATIP regulation, 1956 (amended in 2002) forbids all transfers from Scheduled tribes to non-tribals in scheduled areas. The High Court of Orissa has used this distinction to rule that the State Government can acquire land owned by scheduled tribes for transfer to non-tribals through Land Acquisition Act, 1894.”

Then the study continued, “Large areas of land in Scheduled Areas, including in territories of Primitive Tribal Groups (PTGs) are being acquired in districts like Keonjhar and Sundargarh (iron ore and manganese mines, steel factories) and in scheduled areas of South Orissa (Kalahandi, Koraput, Rayagada) for bauxite mining and alumina refineries, along with associated infrastructure. These are all private companies. In many areas such land acquisition is being fiercely resisted by tribal communities, as in Kashipur and Lanjigarh, leading to considerable state repression. Both in Kashipur and Lanjigarh, acquisition of land from STs have been carried out in violation of OSATIP Regulation, 1956, Section 3(1), as the tribals have been made landless”.

The above study apprehends that in order to escape the legal consequences, the Govt of Orissa is planning to amend the OSATIP Regulation, 1956 itself through inserting a clause allowing scheduled tribes to donate land for development purposes and lease out land to any corporate body. Such an amendment will remove all protection for tribal land alienation, as any non-tribal could float a company and bribe the local administration to allow such a transfer. The role of state machinery in facilitating private capital’s control of natural resources, especially minerals, in the scheduled areas is too known. In many instances even existing laws are being contravened with impunity by private companies in collaboration with administration.

The above Study therefore felt, “Removal of even the fig leaf of protection provided by the Section 3(1) of OSATIP Regulations, 1956, will leave the scheduled areas totally open to mining and industrial sector without any control. It is doubtful whether the protections provided in Schedule V can be reconciled with the political economy of profit oriented resource extraction from backward areas inhabited by disempowered and voiceless tribal people. The record of the State in upholding the sanctity of Schedule V has been extremely poor. .. It is suggested that instead of diluting the law, the spirit of Samata Judgment and the Schedule V of the constitution be followed and all land transfers in scheduled areas to nontribals be forbidden”. (*Source: ‘A Socio-Economic and Legal Study Of Scheduled Tribes’ Land in Orissa’ by By Kundan Kumar and Pranab Ranjan Choudhary With VASUNDHARA Team Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, Bhubaneswar 2005 Supported By World Bank, Washington*)

2.20 What Orissa should do to ensure prevention of alienation of tribal land:

Under the circumstances, in order to ensure non-transfer of tribal land to non-tribals the Government of Orissa ought to address to the following concerns:

- The Govt of Oriss should strictly enforce at the field level the OSATIP Regulations, 1956 as amended in 2002;
- The Govt of Orissa should desist from diluting the OSATIP Regulations, 1956 (amended 2002) by a further amendment aimed at easing the donation and lease of tribal land to corporate houses in the name of development projects;
- Rather the Government of Orissa should render the OSATIP Regulations, 1956 (amended 2002) more stringent by an amendment on the lines of Samata Judgement and the provisions of Andhra Pradesh Scheduled Area Land Transfer regulation, 1959 as amended in 1970.

- Above all, in compliance to the Section 3(1m) of recently enforced *ST and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 and Rules-2007* made thereunder, the State Government of Orissa should build a meticulous documentation of all the tribal and forest dwelling families who were displaced by the developmental projects in the past but were not rehabilitated at all or in a proper manner and then proceed to rehabilitate them in situ or in a suitable habitation.

Sources consulted:

- *Orissa ECONOMIC SURVEY 2005-06*
- *THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996 No.40 OF 1996 (24th Dec, 1996)*
- *Census of India covering 1971 to 2001*
- *'A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa' by Kundan Kumar, Pranab Ranjan Choudhary, Soumendra Sarangi, Pradeep Mishra, Sricharan Behera, supported by World Bank, 2006*
- *Land Acquisition Act, 1894*
- *Orissa Land Reform Act, 1960*
- *Orissa Government Land Settlement Act, 1962*
- *Orissa Forest Act, 1972*
- *Orissa Prevention of Land Encroachment Act, 1972*
- *Orissa Development Report, 2001, Planning Commission*
- *Orissa Scheduled Area Transfer of Immovable Property Regulation, 1956 and Amendment of 2002*
- *The Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 as amended in 1970*
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