

# Community Rights in Land in Jharkhand

*This paper examines the manner in which community land rights, which were recognised in the Chhotanagpur Tenancy Act, have been abrogated since independence due to various changes in the law and land revenue system, and the conflicts that have arisen as a result.*

CAROL UPADHYA

The colonial land revenue laws in Chhotanagpur (present-day Jharkhand) were perhaps unique in India in the extent to which community rights in land and other resources were recognised. But from soon after independence, these rights have been progressively diluted due to various changes in the law and land revenue system, creating conflicts over access to, and control over, common lands. This paper traces the process of abrogation of community land rights, beginning with their establishment during the colonial period, and the conflicts that have arisen as a result.

## Creation of Community Rights in Land

In response to the repeated agrarian uprisings that occurred in Jharkhand throughout the 19th century, a series of legislations was enacted, culminating in the Chhotanagpur Tenancy Act (CNTA) of 1908 – still the major land tenure act in force in the region. The CNTA provided not only for the creation and maintenance of land records, it also created a special tenure category of “Mundari khuntkattidars” (considered to be the original settlers of the land among Mundas)<sup>1</sup> and restricted the transfer of tribal land to non-tribals. Most significantly, the CNTA provides for the recording of various customary community rights in land and other resources (‘jungle or wasteland’), such as the right to take produce and to graze cattle, as well as the right to reclaim “wastes” or convert land into “korkar”.<sup>2</sup>

The main sources of land and community rights for cultivators in Chhotanagpur today are still the “khatians”, or record of rights, that were created during the initial and revisional survey and settlement operations carried out under the CNTA. The original land records were published in three parts: Part I is the *Khewat* or “record of rights”, which shows the order of rights or interest in each plot of land; Part II is a record of community rights, commonly known as *Khatian* Part II; and Part III is the *Village Note*, which provides a general description of the social and economic organisation of each village, the rights and duties of headmen, and community rights in land and resources. The CNTA specifies generally what kinds of community rights are to be recorded in the land records, but the specific customary rights for each village were to be ascertained during the survey and recorded in the *Khatian*. While such community rights were recorded during the colonial settlements in the surveys carried out post-independence, there has been a tendency to ignore these rights. To illustrate this process, the cases of two districts – Ranchi and Singhbhum – are discussed below.

### Ranchi District

Two major land surveys were carried out in Ranchi district during the colonial period – the first in 1902-10 [Reid 2001(1912)] and a revisional survey in 1927-28 [Taylor 2001(1938)]. In these surveys, two categories of community or non-private lands were recorded (apart from Mundari khuntkatti land, which was also

collectively held in theory) – uncultivated “common lands” (“gair mazrua malik or khas”), and other community lands that were put to specific uses, such as graveyards, sacred groves, village roads, etc (“gair mazrua am”).

Uncultivated “waste” and jungle land accounts for the largest amount of common land in Jharkhand, and is referred to by the term *gair mazrua khas* (or “gm land” for short).<sup>3</sup> Although by custom such land was under the control of local communities, during the settlement they were recorded in the “gair mazrua khatas” of the superior tenure holders (such as the zamindars) of each village, or of the Mundari khuntkattidars in their areas. However, the specific rights of various groups, including the landlords, khuntkattidars, raiyats, and other villagers, were recorded in the *Khatian* Part II for each village. These included user rights (for grazing, to collect or cut wood and other forest products, etc) and settler rights – the right to reclaim land for cultivation with the permission of the headman. The nature and distribution of these rights varied depending on the status of the groups concerned (landlord, raiyat, or Mundari khuntkattidar) and the nature of the settlement (Mundari khuntkatti, broken khuntkatti, or vested/raiyyati).<sup>4</sup> In Mundari khuntkatti villages, “the Mundari khuntkattidars... are the proprietors of the jungles included within the periphery of their villages” [Reid 2001(1912):358-59], and they had the right to bring gm land under cultivation. In all types of village, user rights in gm land (to graze cattle, collect fruit and wood, and so on) were recorded collectively for all residents in the *Khatian* Part II. Even in “vested” villages, tenants had the right to reclaim portions of the jungle or “waste” [Taylor 2001(1938):1218].

*Gair mazrua am* lands were recorded in a special khata and included “lands which belong to the inhabitants of a village as a whole or to a certain section of those inhabitants collectively” (ibid:1194-95), such as dancing grounds, burial grounds, sacred groves, and temples. In all types of village, gm am lands were considered to be community lands which the zamindars did not have the right to use or settle [Singh 2002:155].

### Singhbhum District

The land tenure system in Singhbhum district was and is quite different from that in Ranchi, where the zamindari system held sway. After the Kol rebellion, the Kolhan (now part of West Singhbhum district) was formed as a government estate and a system of direct administration (based on “Wilkinson’s rules”) was created in order to keep the Kolhan as a “reserve” for the Hos and to preserve their “communal” social system. Administration was controlled directly by the Kolhan superintendent, who governed through the Ho Mundas and Mankis. All cultivated land was at the disposal of the “community” but controlled by the Munda/Mankis [Mazumdar 1950:11].

The major survey and settlement in this region was carried out between 1913 and 1918, and the special position of the Munda/Manki was reflected in the khewat in placing their names after

the first – “secretary of state in council” [Tuckey 2001(1920):686]. Three types of gair mazrua land were recorded: gm malik, which included waste and jungle lands, rivers, government “bandhs”, and major roads; gm am (village roads and paths, public tanks, sacred groves, etc); and gm makan, for houses of non-agriculturalists. All resident settled raiyats and Ho raiyats had the right to graze animals in the jungle, on wastelands, and on cultivated land after the crop was cut, free of charge, as well as the right to reclaim village jungle and wasteland within the village, with the permission of the Munda (ibid:696).

## Post-Independence Changes in Land Revenue Laws

After independence, legal changes significantly altered the land tenure system in Jharkhand. The most important of these was the zamindari abolition, effected by the Bihar Land Reforms (BLR) Act, 1950, which provides for the “vesting” in the state of all lands, estates and interests (other than raiyati lands), abolishing all intermediate tenures, and the transfer of all land recorded in the names of zamindars and other tenure-holders to the state [Malhotra and Ranjan 2002:7]. However, “bhuinhari” and mundari khuntkattidari tenancies were exempted from the ambit of this act by a 1954 amendment. After zamindari abolition, there remained basically two categories of land in this region – Mundari khuntkatti and “vested”.

These legal changes were supposed to be reflected in the fresh land surveys that were undertaken from 1958. However, till date revisional surveys have been completed in only six of the 22 districts, in part due to resistance by local people. As a result, land records have not been updated in many areas, and the record of rights created during the colonial period remains in force. Where the new surveys have been completed, community rights have been significantly diluted, as the following examples illustrate.

### Singhbhum District

Singhbhum is one of the few districts of the state where a revisional survey has been completed, between 1958 and 1965. Initially there was resistance to the settlement operations, especially by the Mundas and Mankis in the Kolhan, due to “their apprehension that their community rights and specific privileges enjoyed by them both in terms of statutes as well as in terms of... age-long customs would not be recorded” [Prasad 1970:34]. Although they were given assurances by the government that existing rights and privileges would be recorded and the agitation was withdrawn, in fact, they lost their privileged place in the land tenure system.<sup>5</sup>

Even more significant was the takeover of common village lands by the state. Gm lands, which earlier were recorded under the name of the Munda/Manki or pradhan, were recorded as government lands: gm am became “anabad sarva sadharan” while gm malik became “anabad Bihar Sarkar”. This means that the government, rather than the Mundas/Mankis, now has the right to settle this land for cultivation or use it for any other purpose. Although the settlement report states that the lands recorded under anabad sarva sadharan “belong to the inhabitants of a village as a whole or to a certain section of those inhabitants collectively”, it is not clear whether these community rights were recorded as before. Moreover, it appears that the *Khatian* Part II, with its record of customary user and settler rights in gm malik and am lands, was not even prepared for this district, although it was mandated by the CNTA. In Singhbhum the process of takeover of gm lands by the state appears to be so complete that even memory of this document is being lost.

### Ranchi, Lohardaga and Gumla Districts

The revisional survey of Ranchi district that was initiated in 1976 soon ran into resistance, especially in the Mundari khuntkatti areas, where local leaders have always claimed an autonomy from the state. The resistance movement made several demands, including: in Mundari khuntkatti villages the names of the Munda or pahan should appear first in the khewats rather than that of the government; Mundari khuntkattidari and bhuinhari forests should be entered in the names of the respective Mundari khuntkattidars and bhuinhars, and the customary rights of the raiyats in other kinds of forests should be recorded; those who had constructed houses on gm am or gm khas land should be given khatas for them, and gm land converted into korkar with the permission of the village headman should be entered in the record of rights; gm lands should not be recorded as anabad Bihar sarkar; and illegally occupied adivasi lands should be restored during the survey process rather than through the ordinary restoration process [Roy Burman nd:191-92]. Most of the demands centred round the retention of community control over land and other resources, as well as Mundari khuntkatti rights. In 1981, and again in 1984, the government attempted to defuse the agitation by conceding most of these demands, but because it did not agree to record the names of Manki/Munda as Khewat No 1 in place of “Bihar sarkar”, the resistance continued.

While the survey was completed in Gumla and Lohardaga districts (formerly part of Ranchi district) in the 1990s, in the truncated Ranchi district (which includes the core Mundari khuntkattidar blocks) the survey has not been completed till date. In this area, people are especially suspicious of the government’s plan to record community lands as government land, because they fear that even their existing user rights would be extinguished. This fear was, in fact, borne out by the Gumla and Lohardaga surveys, in which collective rights that were recorded in the earlier khatians were apparently omitted.

## Conflicts over Community Rights in Land

As the discussion above shows, the process of “vesting” of gm lands has led to the erosion of community rights in land, and this has given rise to conflicts between the state, which claims the sole right to settle or use such land, and local communities, which regard these lands as common lands for their own use. While the revisional surveys have made the “vesting” operation final by reclassifying “gair mazrua khas” land as anabad Bihar sarkar, this was really only a change of nomenclature, since gm khas land was already vested in the state as a consequence of zamindari abolition. Even more crucial than the change of name has been the failure to record or uphold existing user and settler rights.

### Conflicts over Settler Rights

As noted above, the CNTA and the original land records recognised settler rights on gm or “parti” land, subject to certain restrictions.<sup>6</sup> However, legal ambiguities, coupled with the vesting of such land in the state, have eroded these rights and effectively dispossessed many cultivators who have been occupying such land for years, but who have no legal proof of their possession. For instance, families that had been settled on gm land by a zamindar or Munda, but who had only hukumnamas or rent receipts as proof of possession, could not get their names recorded during revisional surveys. Also, many people have more land than what is mentioned in the khatian because they have brought adjoining gm land under cultivation, which amounts to “encroachment”.

Moreover, the government can legally dispose of gm land, without seeking permission from the local community and without a land acquisition process. This means that people settled on gm land cannot claim compensation for such acquisition, nor can the local community claim a compensation for loss of access to such common land.<sup>7</sup> However, in Kolhan, we were told that by convention the Mundas/Mankis are consulted before the government converts gm land to any other purpose. Also, there is a general impression that the government cannot acquire land under khuntkatti and bhuihari tenures, but whether this is so in law is not clear (and has apparently not been tested in court).

A third issue is that gm land, being the largest proportion of land under the control of the revenue department, is the main source of “vacant” land available for distribution under various land reform programmes. More often than not this land is settled on those who are already “illegally” in possession of it, who may or may not be in the categories eligible for receiving land (SC, ST, landless). While “encroachments” on gm land by the poor can be legalised through a “bandobasti” application, NGOs that have tried to help people regularise their occupancy through this procedure have faced bureaucratic hurdles and corruption. Even when the bandobasti process has been completed, there is no security of tenure: these plots are not recorded in the khatians and the government may take back the land if it is needed for another purpose. The allotment of gm land for cultivation or house sites also conflicts with the need to retain common lands for collective uses.

### User Rights

With the vesting of gm land in the government, the question arises whether local communities retain existing user rights in these lands, even if these have not been specifically recorded in the revisional surveys. Activists maintain that people legally still have the user rights listed in the original *Khatian* Part II of each village, but it is not clear whether these rights would be upheld by courts. Struggles between local communities and the state over the use of “parti” land are usually won by the state, primarily because legal recourse is too expensive.

### Gm am Land

In contrast to gm khas, the category of gm am still includes types of community lands such as sarna and kabristan that presumably are controlled by local people. However, legally these lands have also been taken over by the government, which can allot them for another purpose. According to a circular, the government recognises that gm am lands are valuable to the community but it claims that there is no bar to settlement of such land that “have lost their character by the efflux of time and no longer serve the purpose of the community”. The government has “absolute discretion in the manner in which *Gairmazrua Am* land is to be utilised” [Singh 2002:155-56].

### Economic Impact of Loss of Common Lands

Due to the erosion of community land rights, there has been a decline in the availability of common lands in Jharkhand, but the economic impact of this is difficult to gauge. First, in the past parti lands were available for cultivation whenever a new household settled in a village or a family wanted to expand cultivation, but the right to settle on such land has been severely limited, although “encroachments” still occur. Second, much of the land classified as gm contains scrub or trees which have some subsistence or economic value and to which local people traditionally had free access. (These lands perhaps had

less utility for grazing, since cattle do not form a significant part of the rural economy of Jharkhand and are generally grazed in forests and on fields after harvesting.) The number of disputes that have arisen over settler and user rights in gm land suggest that this is a crucial economic as well as cultural issue for local communities.

### Community Land Rights: Legal Issues

The complexity of land tenure laws and local usage in Jharkhand has created a situation in which the legal status of people’s rights in gm land is not clear, and this ambiguity has created a variety of disputes that have yet to be resolved in the courts. While local people claim user and settler rights in common land as a long-standing tradition – rights that were confirmed in the original land records throughout the region – the legal position has shifted to give superior rights to the government (although existing user rights may still be exercised or even recognised by the local authorities). The legal status of gm land has not been clarified in the courts, but it appears that the processes through which existing user and settler rights in common lands have been eroded are not entirely legitimate. Where new surveys have not been completed the old land records are still in force, including the *Khatian* Part II and *Village Note* detailing user and settler rights. Although activists and lawyers fighting for adivasi rights rely on the original khatians as the source of community and individual land rights, where revisional surveys have taken place, it is not clear whether the older records would be recognised by the courts. However, it appears that there are no grounds in law for ignoring pre-existing rights in common lands even where revisional surveys have been completed. A parallel case pertains to forest land: the ministry of environment and forests has in principle recognised the imperative of retaining pre-existing user rights in the case of land taken over by the forest department.<sup>8</sup> The same principle should apply in the case of the revenue department with regard to community rights in land that it now controls. Further, the Supreme Court has affirmed that zamindari abolition and the vesting of land in the government cannot extinguish existing user rights, at least in water bodies [Upadhyay 2003:4643].

Another legal issue is whether the vesting of gm land in the government contradicts the provisions not only of the Scheduled Areas Regulation Act, which provides for the control of common lands by the gram sabhas, but also the Panchayati Raj Act and the central PESA Act, according to which community lands are to be controlled by the panchayats or gram sabhas. Because panchayat elections have not taken place in Jharkhand, the government feels free to ignore the claims of local communities over these lands, even where local gram sabhas are functioning.

As Videh Upadhyay (2003) points out, “customary” usages become law and are affirmed by the courts only when they are recorded as rights in land records or other such documents. While in many cases customary usages are hard to prove because they have not been so recorded, the case of Jharkhand user and settler rights in gm land appear to be quite clear, given that they were recorded in detail in the khatians of each village. This means that any move to dilute or abrogate such rights by the state, whether through “vesting” of common land, land acquisition, reservation of forests, or other such means, is blatantly illegal. However, the legal and administrative quagmire of the land tenure regime in Jharkhand, coupled with the expense and difficulty of pursuing court cases and rampant corruption in the judiciary and administration, have allowed the state to usurp community rights in many places. The continuing struggle against this process in some areas provides some glimmer of hope that resistance is possible, but without a thorough transformation of the political

system, it is unlikely that these conflicts will be resolved in favour of the local communities. [PVI]

Email: cupadhya@vsnl.com

## Notes

- 1 An earlier survey in 1869 recorded the rights of the bhuinhars or original reclaimers of the land, while the 1902-10 survey focused on khuntkatti rights, but these categories basically referred to the same type of "tribal" land system [Reid 2001(1912):327].
- 2 'Korkar' refers to upland, jungle or wasteland that is converted into don or rice land by terracing or embanking, but in legal parlance it refers to any land reclaimed by raiyats of a village who are not khuntkattidars. The CNTA provides for the right of every cultivator or landless labourer resident in a village or contiguous village to convert land into korkar with prior permission of the DC.
- 3 Although gair mazrua literally means "uncultivated", the language of the revenue department and the law has tended to gloss it in English as "wasteland", which implies uncultivable land even though it may include cultivable land.
- 4 In the land revenue system of Chhotanagpur there are three categories of villages: Mundari khuntkatti, "broken" khuntkatti (in which the collective landholding system was "broken"), and "vested" or raiyati. In the "pure" Mundari khuntkatti villages, the names of the Mundari khuntkattidars were entered jointly under one serial number in the khewat, while in raiyati villages, individual holdings were recorded. In "broken" villages the records are usually a mixture of these two types.
- 5 With the abolition of intermediary rights, the names of various intermediate tenure holders were removed from the khewats and Bihar sarkar became the superior tenure holder. In the old khewats in the Kolhan, the Manki/Munda are listed second, under "Kolhan Government Estate", but during the revisional survey their names were removed, giving rise to the resistance.
- 6 When asked about rights to common land, people speak of parti land (which means uncultivated or empty, but may also mean fallow land)

- as equivalent to gm land, but legally these categories are not the same.
- 7 According to a revenue department circular dated 28-3-69, gm khas lands are already vested in the state and cannot form the subject of proceedings under the Land Acquisition Act [Singh 2002:292-93]. According to a circular dated October 7, 1991, "encroachers" on gm land are not entitled to compensation, unless the occupation is of such long duration that he is entitled to be settled (ibid:301-2). However, procedures were laid down for compensation for gm am land (for loss of an "incorporeal right of the community"), to be paid to the gram panchayat (circular dated October 7, 1971, in Singh 2002:302-03).
  - 8 I thank Madhu Sarin for pointing this out to me.

## References

- Malhotra, V and R Ranjan (2002): *Commentaries on Bihar Land Reforms Act, 1950*, Malhotra Books, Patna.
- Mazumdar, D N (1950): *The Affairs of a Tribe: A Study in Tribal Dynamics*, Universal, Lucknow.
- Prasad, C B (1970): *Final Report on Survey and Settlement Operations in the District of Singhbhum (1958-1965)*, Government of Bihar, Patna.
- Reid, J (2001(1912)): 'Final Report on the Survey and Settlement Operations in the District of Ranchi, 1902-1910' in Roy (2001), pp 256-57.
- Roy, Pandey R N (2001): *Manual of Chhotanagpur Tenancy Laws, Vol II*, Rajpal and Company, Allahabad.
- Roy Burman, B K (nd): 'Historical Ecology of Land Survey and Settlement in Tribal Areas and Challenges of Development (with Particular Reference to the Central Tribal Belt) of India', Council for Social Development, New Delhi.
- Singh, S K (2002): *A Compendium of Revenue Circulars* (ed), Malhotra Bros, Patna.
- Taylor, F E A (2001(1938)): *Final Report on the Revisional Survey and Settlement Operations in the District of Ranchi (1927-1935)* in Roy (2001), pp 1137-1278.
- Tuckey, A D (2001(1920)): *Report on the Resettlement of the Kolhan Government Estate* in Roy (2001), pp 647-806.
- Upadhyay, V (2003): 'Customary Rights over Tanks', *Economic and Political Weekly* 38, pp 4643-45.

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