

**CUSTOMARY LAWS AND USAGES  
AMONG ST COMMUNITIES OF  
ODISHA AND THEIR IMPLICATIONS  
FOR MAKING MODIFICATION IN  
LAND LAWS RELATING TO PROPERTY,  
INHERITANCE AND LAND TENURE  
(TRIBES- DANGRIA KANDHA & PAUDI  
BHUYAN)**

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# THE RESEARCH TEAM

**Prof (Dr.) A.B. Ota, I.A.S.**

*Director, SCSTRTI*

*& Special Secretary to Government*

*& Adviser TD and SDC*

## PROJECT DIRECTOR

**Mr. Sarat Chandra Mohanty**

*Consultant (Research and Publication)*

## NODAL OFFICER

<b>Dr. Mihir Kumar Jena</b>	<i>Consultant</i>
<b>Ms. Pollyshree Samantray</b>	<i>Research Associate</i>
<b>Mr. Saubhagya Ranjan Sahoo</b>	<i>Research Assistant</i>
<b>Ms. Jinmayee Hitesini Smitahasini</b>	<i>Research Assistant</i>
<b>Mr. Jogendranath Barik</b>	<i>Data Analyst</i>

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**Prof (Dr.) A.B. Ota, I.A.S.**  
**Director SCSTRTI &**  
**Special Secretary to Government**

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## ABBREVIATIONS USED

AIR: All India Reporter  
ATILTA: Agency Tracts Interest and Land Transfer Act, 1917  
CLT: Cuttack Law Times  
DKDA: Dongaria Kandha Development Agency  
FRA: Forest Rights Act  
FCA: Forest Conservation Act  
ILR: The Indian Law Reporter  
LAA: Land Acquisition Act  
MELA: Madras Estate Law Act  
OCFPL, 1948: Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948  
OCH&PFL Act: The Orissa Consolidation of Holdings and Prevention of Fragmentation of Lands Act, 1972  
OEA Act: Odisha Estate Abolition Act, 1951  
OGLS Act: Orissa Government Land Settlement Act, 1962  
OLR Act: Orissa Land Reforms Act, 1960  
OLR: Odisha Law Reviews  
OMS Act: Orissa Merge State Law Act, 1950  
OPLE: Odisha Prevention of Land Encroachment Act  
OPDR Act: Odisha Public Demand Recovery Act, 1962  
OSATIP: The Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation Act, 1956  
PBDA: Paudi Bhuyan Development Agency  
PC: Penal Code  
PESA: Panchayats (Extension to Scheduled Areas) Act  
PVTG: Particularly Vulnerable Tribal Group  
RFCTLARR: Right to Fair Compensation and Transparency in Land Acquisition Resettlement and Rehabilitation Act, 2013  
R&DM Dept: Revenue & Disaster Management Department  
RDC: Revenue Divisional Commissioner  
RoR: Record of Rights  
SC: Scheduled Caste  
SCSTRI: Scheduled Castes & Scheduled Tribes Research and Training Institute  
ST: Scheduled Tribe  
ST&OTFD Act, 2006: Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006

## Chapter -1

# Introduction

### Tribal customary law

Tribal Customary Law has been studied as part of the study of tribal society. In the process a distinction has been made between sanction in primitive society and the law of the more advanced society; between the uncodified, unwritten customary rules recognized as binding by a tribal community and the larger corpus of the laws enacted and enforced by formal state system. The critical role of tribal customary law in the maintenance of tribal solidarity – and now tribal identity- has generally been overlooked. With the growing understanding of our pluralism there is now an awareness of the need to know more of the tribal customary laws.

Singh (1993)<sup>1</sup> provided a comprehensive account on tribal ethnography, customary law and change. Colonial administrators-turned-ethnographers in their monographs on tribal people dealt with the administration of justice, land rights, rules of inheritance and succession, chieftain-ship, bride price, family, marriage and divorce rules, etc. for instance, C.G.Crawford in Handbook of Kuki Custom covered such matters as inheritance, land hire, divorce price, seduction, slave price, loans and oaths. Of all the tribes of the North East, the Garo laws were studied most systematically in the pre-independence period.

A major work was undertaken by W.G. Archer on the compilation of Santal laws in the mid 1940s. It is the most comprehensive work on tribal customary law. It covers a much larger canvas of tribal civil law and administration of justice among the Santal than any other work of the colonial period.

The makers of Indian Constitution recognized the need for a separate political and administrative structure for the tribes. Special provisions were made to prevent encroachment on tribals' land, uphold tribals' land rights and other customs, etc. there was an appreciation of the need for the codification of tribal customary laws in different parts of India.

In the 1980s pioneering work was done in the field of the codification of tribal law by the Law Research Institute of Gauhati High Court. The North Eastern Council approached the Gauhati High Court in 1976 for undertaking the study of the customary laws of the tribes. The Institute has embarked on research into the origin and evolution of various laws prevalent among the tribal people, their historical development, as well as the basic synthesizing influences in North Eastern region.

The Law Research Institute has prepared 12 reports. The reports on the Garo and the Wancho tribes were the first to be finalized, during 1979 and 1980. The report on the Riang of Tripura followed in 1981; the reports on the Ao of the Nagaland, Mizo of Mizoram, Pati Rabha of Assam, and Tangkhul of Manipur were submitted in 1982. These reports covered family, marriage, dowry, adoption, maintenance, minority and guardianship, inheritance and succession, slavery and 'servile' institutions, gifts, loan, debit, well, sale, lease, mortgage, land, administrative authority and administration of justice.

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<sup>1</sup> Anthropological Survey of India (1993): Singh, K.S. (Ed) Tribal Ethnography Customary Law and Change. Concept Publishing Company, New Delhi

The Indian Law Institute, New Delhi, brought out a holistic study on the customary law and justice in the tribal areas of Meghalaya (Kusum and Bakshi, 1982)<sup>2</sup>. This study attempts coverage of the rules, customs and institutions pertaining to the customary laws among the Khasi and Garo. The book deals with a review of all acts and regulations which have been in operation from the colonial to post-colonial period along with judicial systems among the Khasi/Jaintia and Garo, their village councils, patterns of residence, the female heirs, mother-rights, marriage, divorce, classification of property, adoption and guardianship, inheritance and succession.

It should be noted that inspite of the assimilation of tribal communities into the system of the state laws represented by the Indian Penal Code, the Indian Penal Code and the Code of Criminal Procedure there remains in tribal society a large residual area of autonomy in many matters such as settlement of matters of civil or social nature in the tribal world. The tribal council functions effectively even today. In recent years with the institution of Lok Adalat the stress on disposal of cases at the grass-roots level, and the functioning of people's courts in some areas, the processes of the settlement of disputes of minor nature at the local level have gathered momentum. In these circumstances the tribal customary laws need to be codified and integrated with these local level processes.

Tribal justice system and regular justice system are different in their structure and approach. The modern legal system is largely based on the English Common Law and is characterised by uniform territorial rules, based on universal principles of natural justice and is administered by a hierarchy of courts. This system has regular and affirmed methods of revisiting and revising its rules and procedures. Whereas, the traditional systems of justice are largely un-codified, comprise of overlapping jurisdictions enjoying autonomy in administration of justice. Due to the diversity among the tribal groups, each tribe in India has its unique socio-cultural milieu and dispute resolution practices and which have remained unchanged over generations<sup>3</sup>.

In Scheduled and Tribal Areas, the preference of people to the tribal justice system is quite high as compared to the formal justice system. Due to expensive and dilatory procedures of courts, they fail to become the endpoints for justice for the marginalised. Therefore, traditional or customary institutions for resolution of disputes have been recognised through legislative instruments in several States<sup>4</sup>.

The Parliamentary Standing Committee in its Twenty-sixth Report on Demands for Grants (2008-09) of Ministry of Law and Justice has observed that:

Though, there were no written rules for administration of tribal villages, but the customs and traditions were almost compatible with the modern concepts of jurisprudence. The tribal councils in North East State were functioning on the lines of the system evolved for parliamentary democracy, which is in vogue now a days. The council derived their authority from the expression of the will and power of the people. They had the support of both social and supernatural. Thus the concept of parliamentary democracy is not new to the tribal society<sup>5</sup>

### **Particularly Vulnerable Tribal Groups (PVTGs)**

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<sup>2</sup> ibid

<sup>3</sup> Background Note on the subject supplied by Department of Justice, Ministry of Law and Justice

<sup>4</sup> ibid

<sup>5</sup> Twenty-sixth Report on Demands for Grants (2008-09) of Ministry of Law and Justice presented to Parliament on 29<sup>th</sup> April, 2008 (p. 76).



Indian tribes including the Odishan tribes have maintained their cultural identities by their distinctive racial traits, languages, social systems, customs and traditions which they have developed to maintain orderly social life. These tribal societies, by and large, are folk societies where indigenous cultural matrices revolve around oral traditions and endogenous value systems and their customs and traditions still continue to maintain the code of conduct of the folks. It is therefore said that the tribal folks are "custom-bound" and "tradition oriented". Study of tribal customs and traditions is therefore useful for closer understanding of their society and culture. It is also necessary for their better administration and development.

Consequent upon the promulgation of the Scheduled Tribes Order, 1950 and subsequent amendments 62 ethnic groups have been enlisted as Scheduled Tribes for the state of Odisha. The Dhebar Commission (1960-1961) stated that within Scheduled Tribes (STs) there existed an inequality in the rate of development. During the 5th Five Year Plan (FYP) a sub-category was recognized within STs those were considered to be at a lower level of development. This special category was named "Primitive Tribal Group" (PTGs).

**Government of India (GoI) has prescribed four main criteria for identifying Primitive Tribal Groups. The criteria are: (i) pre-agricultural level of technology and economy, (ii) very low rate of literacy, (iii) declining or near stagnant population, and (iv) general backwardness due to seclusion, and consequential archaic mode of living.** Most of these groups are small in number and generally, live in remote habitats, with poor administrative and infrastructure back up. In fact, the PVTGs are considered a special category in view of their distinctly different social, cultural and occupational practices and traits.

In 2009, Government of India (GoI) decided to re-designate "Primitive Tribal Group" (PTG) as "Particularly Vulnerable Tribal Group (PVTG)" considering the complaints that the term 'primitive' is value loaded.

By the end of the 5<sup>th</sup> Five Year Plan, 52 communities were identified as PTGs, 20 more were added during the 6<sup>th</sup> Plan, 2 more during the 7<sup>th</sup> Plan and 1 more in the 8<sup>th</sup> Plan, making a total 75 PTGs in the whole of India. They were identified on the recommendations of respective state governments based upon the criteria prescribed by the Central Government.

In the state of Odisha there are 13 PVTGs identified from the 5<sup>th</sup> Five Year Plan (FYP) and onwards which includes Bonda (5<sup>th</sup> Plan), Juang, Dongaria Kandha, Kutia Kandha, Paudi Bhuyan Lanjia Saora, Saora (Plan Holiday, 1978-79), Didayi, Hill Kharia, Mankirdia, Birhor, Lodha (7<sup>th</sup> Plan) and Chuktia Bhunjia (8<sup>th</sup> Plan). Thus among the states and UT, Odisha has the largest number of PTGs.

During the 5<sup>th</sup> Five Year Plan, GoI decided to plan and implement specific development programmes focused on the all-round development of the PTGs. The programmes were mainly addressed to deliver packages of services consistent with their cultural, social, educational and occupational background with a view to facilitate and gradually align them with the mainstream of society and enhance their social and economic status.

#### **Land related Customary Laws and usages among tribal communities in context**

**Custom**, in simple terms, means an established pattern of behaviour and a uniform conduct observed by the people living in a society or a particular area for a long period of time. **When such practice is**

**accepted by law or given legal recognition, it becomes a codified legislation known as customary law.** The customary laws provide a wealth of information about the customs and usages observed in a particular community or society. It is not a single body of law but is an adaptive, flexible, evolving body of norms and rules governing the behaviour of communities over long periods of time. Customs are usually characterised as ancient, certain, reasonable and invariable. Prudentially, there emerge two distinct frameworks namely – law and custom.

The codification and legal recognition of these customs is important. The co-existence of customary practices and formal law is not peaceful but subject to conflicts and contradictions with adverse impact not only on the societal relations but also the working of the legislature in the effective implementation of the laws. This is because law in action may be quite different from law in books. Customs are not clearly defined and are not universally applicable and in their actual operation adapt themselves to the socio-political contours of society.

Moreover customs and practices followed in one particular community may differ from those followed in another leading to conflicts with regard to the statutory laws. Customs occupy a very prominent place in modern India, and are recognized by the Parliament and the legislatures as valuable in the administration of law and justice. The Constitution of India treats customary law on the same lines as other branches of civil law. **Custom is an integral constituent in the Indian as well as the International legal system.** Unlike Statutory law, customary laws come into sight from the community, and command social acceptance and observance or compliance. However no custom will be legally recognised if it is opposed to the principles of justice, equity and good conscience.

**According to Article 13,** the term 'law' includes 'customs' and 'usages' having the force of law. But it cannot infringe any of the fundamental rights conferred by part III of the Constitution. Such laws can be taken judicial notice by the courts under the **Indian Evidence Act, 1872. Under The Indian Easements Act, 1882, an easement may be acquired in virtue of a local custom.** For example, a customary right of way on the part of a certain group of people to use a piece of land not theirs as a pathway.

When we are thinking about bringing about Synergy between Tribal Justice System and Regular Justice System of the Country, the codification of unwritten tribal customary laws becomes very important as that will serve as the first step in this direction. The Parliamentary Standing Committee has observed that the first prerequisite for an effective synergy between the tribal justice system and the regular justice system is the dedicated effort at codification of customary law of tribal communities. At present the tribal customary laws are oral in nature which is committed to the memory of a few key individuals in the village. Hence, codification thereof is a tough challenge for the State.

Article 13(3) of the Constitution of India has clearly recognized custom as a source of law. Customs are recognised as a measure of laws if that is immemorial in origin, reasonable in nature and continuous in use and in conformity with the provisions of the Constitution. Certain provisions in the Constitution of India and some special laws, however, recognise the tribal customary practices and also the existence and role of community participation in disputes resolution. The Fifth and Sixth Schedules of the Constitution provide for administration of tribal areas in notified States. Special Constitutional provisions under Article 371 have been provided for North-Eastern States. Dispute adjudication as per traditions and customs has been provided for in the Panchayat (Extension to Scheduled Areas) Act, 1996 and Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act,

2006.

National Commission for Women in its Report on Customary Laws in North-East India: Impact on Women (2007) observed that:

"...In the Northeast (the 6<sup>th</sup> Scheduled States) many tribes continue to regulate themselves according to their own customary laws while most laws of the Middle India (the 5<sup>th</sup> Scheduled States) tribes fell by the wayside because of the onslaught of the pan-Indian laws. Among many hill tribes of this region the village chief regulates the use of land and water and has administrative and judicial power. ... The tribes combine kinship based political organisation with well-defined laws and procedures for punishment of offenders through traditional courts."

**In the state of Odisha coming under the 5<sup>th</sup> Scheduled States, there is no specific Acts, Rules etc. which incorporate tribal laws. The customary tribal justice system that was delivering very speedy and cost effective justice to its people since time immemorial has been declining fast under the changing circumstances of its non- recognition and superimposition of modern political institutions and formal justice system since the time of colonial administration and it's continuance after independence. Where ever it still exists, it's traditional institutions of village, regional and apex level leaders, community elders and councils resolve disputes and dispense justice in customary matters relating to marriage, bride price, incest, pre-marital pregnancy, pre-marital and extra-marital affairs, divorce, petty theft, maintenance, adoption, guardianship of minors, inheritance and succession, partition of property, domestic quarrel, black magic, etc. This system needs to be revived and given due recognition.**

**In this situation the recommendation of the Parliamentary Standing Committee that the "Tribal Justice system needs to be brought by separate Central legislation in the Parliament with liberty to States to amend, add or modify according to the need of the particular State" seems pertinent. Such law should give institutional support in the name of 'Tribal Justice Court' system with flexibility of appointing presiding officer and staff from existing personnel without insisting on tenure, age, education, and other matters. .... Hence the tribal justice system has to be allowed to be synchronised with regular Justice systems at the root level so that judge-made law will give energy to bring statutory law.**

Customs also occupy a prominent place under international law. **The Convention on Biological Diversity (CBD)** lays down that nations should respect, preserve and maintain knowledge, innovations and practices of local communities relevant for conservation and sustainable use of biodiversity.

**The Rio Declaration, Agenda 21, and Forestry Principle** also encourages the promotion of customary practices conducive to conservation. Likewise **International Declaration on Human Rights** directs the governments to grant basic human rights to people. **Custom has no existence outside statute law and to have colour of a rule or law it has to be discovered, asserted and sanctified by the judiciary.**

Review of one of the pioneering works 'Tribal Ethnography, Customary Law and Change', edited by K.S.Singh (1993) provides that tribal customary law has been studied as part of the study of tribal society. In the process a distinction has been made between **sanction in primitive society** and the **law of the more advanced society**; between the uncodified, unwritten customary rules recognized as binding by a tribal community and the larger corpus of the laws enacted and enforced by formal state

system. The critical role of the tribal customary law in the maintenance of tribal solidarity – and now tribal identity – has generally been overlooked. The study of tribal customary law in all its aspects has remained a relatively neglected area of tribal studies in the country.

The makers of Indian Constitution recognized the need for a separate political and administrative structure for the tribes. Special provisions were made to prevent encroachments on tribals' land, uphold tribals' land rights and other customs, etc. there was an appreciation of the need for the codification of tribal customary laws in different parts of India.

In the 1980s pioneering work was done in the field of the codification of tribal law by the Law Research Institute of Guwahati High Court. The North Eastern Council approached the Guwahati High Court in 1976 for undertaking the study of the customary laws of the tribes. During 1979 to 1982 the Law Research Institute prepared 12 reports on tribes in North East. These reports covered family, marriage, dowry, adoption, maintenance, minority and guardianship, inheritance and succession, slavery and 'servile' institutions, gift, loan, debit, well, sale, lease, mortgage, land, administrative authority and administration of justice.

The Indian Law Institute, New Delhi, brought out a holistic study on the customary law and justice in the tribal areas of Meghalaya (Kusum and Bakshi, 1982) covering rules, customs and institutions pertaining to the customary laws among the Khasi and Garo. It also deals with judicial systems among the Khasi/jaintia and Garo, their village councils, patterns of residence, the female heirs, mother-rights, marriage, divorce, classification of property, adoption and guardianship, inheritance and succession.

In spite of assimilation of tribal communities into the system of state laws represented by the Indian Penal Code, the Indian Civil Code, and the Code of Criminal Procedure there remains in tribal society a large residual area of autonomy in many matters such as settlement of matters of civil or social nature in the third world.

Amongst the tribal communities there exist methods for social control and the resolution of disputes. Their effectiveness and the ways in which they operate vary. In some localities reliance is placed on the accepted authority of traditional chieftains, and there are established procedures for resolving disputes. These seem to have been affected by the fact of changing socio-economic-cultural contexts. A particular factor has been the intrusion of the general legal system. Although tribal customary laws do not operate in isolation, they have proved remarkably resilient, and able to adapt to changing circumstances. But it should not be assumed that what may seem obvious problems of 'law and order' in tribal communities are regulated by tribal customary laws, or that the attempt to extend the latter's scope to deal with introduced problems is, regarded as desirable by tribals themselves.

### **Range of subjects studied under Customary Law**

Earlier studies on Customary Law of Tribals have by and large covered the traditional and normative rules governing and regulating the customs of the tribes. Studies have argued that observance of these rules is indispensable for the maintenance of social order and continuation of culture. As these are inseparable from the context of the culture, a brief account of culture is necessary to understand customary laws. The cultural areas of operation of these rules, particularly in the dispensation of civil and criminal justice, need also to be identified. The legal, social and supernatural sanctions which make these rules effective are also to be understood. Owing to social change and acculturation infraction of

these rules may be anticipated. Hence, apart from recording the operative rules, and their mechanisms, specific cases should also be studied. Singh (1993) have provided a basic guideline on the thematic areas and sub-areas for a proper study on Customary Law of the Tribes.

1. **Levels and Mechanisms of Social Control:** (i. Form and functions of tribal council both at village and regional levels; ii. Constitution – types of functionaries, mode of recruitment, kinship base-hereditary, selection, and range of choice; iii. Spheres of social control, nature of cases dealt; iv. Authority to impose fine, or inflict physical punishment and other means adopted like vilification and excommunication)
2. **Family:** (i. Locus of authority; ii. Types of family)
3. **Marriage:** (Age of marriage; pre-puberty marriage; forms of marriage; types of marriage; rules and restrictions of marriage; prescriptive and preferential marriage – breach of prescriptions; levirate; sororate; residence after marriage; remarriage and regulating social rules)
4. **Divorce:** (Grounds of divorce for a husband and for a wife; legal effects of divorce; repayment of bride price or any other compensation; social and legal position of the children)
5. **Adoption:** (Rules and specific kin; position of adopted son as heir or successor)
6. **Children of unmarried women:** (legitimacy – mechanism and process of legitimization of illegitimacy; social stigma; duties and obligations towards the child; kinship obligations)
7. **Property:** (Different types of property – land and land tenure; residential land –rights and nature of ownership, basis of rights; Arable land – distribution and demarcation of rights and nature of ownership; Livestock; Produce – Agricultural or non-agricultural; other movable properties and rights over it and basis of rights)
8. **Inheritance:** (Modes of inheritance of landed property; principal heir – primogeniture, ultimogeniture, etc; woman as heir)
9. **Customary rights over natural resources** (Grazing land; Water Rights; Rights over forests for hunting-gathering)
10. **Succession:** (Transmission of office like headmanship, priesthood, etc; eligibility of women for these office; transfer of property by gift, barter or sale; permissive use of property; service)
11. **Categorization of social offences:** (Personal - defamation, abuse, assault; Family – adultery; wrongs against property; other social offences – murder, rape, infanticide, homicide, abortion; and sorcery related crimes)
12. **Case Records**

### **Land governance in Odisha and tribal land issues and customary law**

Odisha came under British control in the late 18th century. However, **under colonial rule it was divided into regions governed by other provincial administrations: Bengal (later, Bihar since 1912), Central Province and Madras Presidency. In addition, there were 24 princely States, which were controlled by the British through a subsidiary alliance, under which the princes had freedom in their own internal administration so long as they regularly paid tributes to the colonial authority.**

As a result, different revenue systems and tenancy laws prevailed in different parts of Odisha. Land distribution at the time of Independence was extremely skewed in Odisha. 53 per cent of the land was held by seven per cent of the landowners, whereas 28 per cent of landowners with sub marginal and

marginal holdings owned about six per cent. Of this nearly 2.31 million hectares had been taken over by the Government and 1.76 million hectares distributed among five million beneficiaries, half of whom are Scheduled Castes and Scheduled Tribes<sup>6</sup>.

The traditional land use patterns of the Adivasi communities was ignored by the State (both colonial and post colonial period) which settled a large area of customarily claimed land as State-owned land. Thus in the Scheduled Areas, an average of 74 per cent of the land is categorised as State land, of which 48 per cent is forest land and 26 per cent is non-forest land. Three-fourths of all land in the tribal-dominated districts belongs to the State, though most of the tribals in these areas are either landless or marginal landowners eking out a predominantly subsistence agriculture-based livelihood.

Analysis of secondary data makes the stark problems of tribal access to land in the tribal areas. The Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq miles (almost 30,720 sq km) of land in Odisha were under shifting cultivation. Very little of the vast area was settled with the tribals. The land was settled either as forest land or as Government revenue land.

Thus paradoxically, even though three-fourths of the land in tribal districts belongs to the Government, most tribals remain landless or marginal landowners. In practice, much of the customary owned land is still under cultivation of the tribals, and is treated by the State as encroached.

The fact that much of the land customarily cultivated by the Adivasis has not been settled with them has had major implications for their livelihoods. Combined with ineffectiveness of laws to prevent transfer of tribal patta land to non-tribals, this has led to loss of access to land and unlawful transactions of customary landownership systems. At the same time, substantial customary tribal lands have been taken over for development and conservation projects as legally, most of the land is Government land.

The limited impact of agrarian reforms in Odisha reflects a new configuration in the social balance of power once the rent seeking interest created by the British Raj was eliminated. The new and middle farmers are well entrenched in the hierarchy of power in the local community and effectively constitute the bridge between the tillers of the soil and the machinery of the State. Secondly land reform entails radical realignment of political, social and economic power in the society.

Ever since independence, various land reforms initiatives were taken to abolish intermediary interests so as to ensure direct relationship of ryots (farmer) with the State. The Odisha Estates Abolition Act 1952, the Odisha Tenant Reforms Act 1955, the Odisha land Reforms Act 1960, Odisha Transfer of Immovable Property Regulation 2 of 1956 (amended in 2002) are some of the important steps taken to safeguard interests of the landless poor.

The Odisha Transfer of Immovable Property Regulation 2 of 1956 was further amended in 2002 and rules were made more stringent to check large scale alienation of tribal land in scheduled areas. The regulation prohibits transfer of immovable properties belonging to members of Scheduled Tribes in favour of persons not belonging to that category. This regulation provides for penal action in respect of illegal transfer as well as unauthorised transfer. In spite of all these provisions, illegal transfer and sale of land remained a regular issue in tribal areas.

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<sup>6</sup> P.K. Mohanty: Odisha needs pragmatic approach to settle land issues, The Pioneer, 29 Sept 2014

Women's rights over land are a crucial issue for any developing society as it is directly linked to right to food, work and other human rights. The denial of inheritance of land rights especially in a patriarchal system has contributed to the subordinate status of women.

The Government of Odisha has decided to distribute all such land under ceiling surplus to landless people with high priority being given to landless widows and unmarried women up to 30 years of age, as well as to joint patta for the husband and wife. Still, significant gaps exist between women's land rights and their actual ownership and possession.

The Bhoodan movement was initiated by Acharya Vinoba Bhave in 1951 with the objective of bridging the gap between the landed peasantry and the landless by invoking a sense of altruism for redistribution of land for social justice. Since then land was received as donation from benevolent land owners and the same were distributed among the landless persons under the Bhoodan Act, 1953 and Rules 1954 which was later replaced by the Bhoodan Act, 1970 and Rules 1972. Under the Bhoodan movement, land was distributed to the poor and landless by the first generation of land owners and so necessary records for such transfer of title were not created. There has been no survey to assess the exact nature and volume of such illegal encroachment and no subsequent enforcement to bring back the land. As per Annual Activities Report of Revenue and Disaster Management Department for the year 2011-12, an area of 638,706.50 acres of land were collected as donation of which 579,994.21 acres of land had already been distributed among 152,852 landless persons. The balance 58712.29 acres of undistributed land are pending with the Samiti.

Land distribution to the landless does not seem to have made much headway as a large number of people who had got land under various schemes and under ceiling surplus are still languishing in abject poverty due to lack of access to land. The lack of proactive involvement of the field level revenue officials and resultant limited action has helped the encroachers in continuing illegal possession of ceiling surplus land. Issues that stand in the way are continuance of control by previous owner, underdeveloped land and lack of record of rights, etc.

### **Tribal customary rights over land and Forest Policies**

Studies on PVTGs indicate that most of them are shifting cultivators and their rights over land have not been properly addressed through several settlement processes in the Independent India. There has been continuous struggle of the tribal communities for rights over land – right over land under podu; rights over flat forest lands converted to agricultural land; rights over reclaimed valley bottom and anabadi land. The problems related to land have been addressed through several development programs, legal reforms, Orissa Land Reforms Act, Forest policies and Acts but there has been no significant development on the matter of securing rights over land of tribals.

Understanding the gravity of problems related to tribal rights over land Roy Burman Committee (1982) made certain recommendations reflecting over Forest Conservation Act 1980 so as to give the tribals their rights over land. The recommendations are as follows:

- The traditional rights, concessions and privileges of tribals in respect of all forest produce, grazing and hunting should not be abridged.
- In the forest villages, they should be given heritable and inalienable right over land which they cultivate.

- There should be restrictions on deforestation of the area vulnerable to soil erosion, landslide, desertification etc., Felling of trees should, ordinarily, be prohibited.
- Association of tribals should be ensured in large scale plantation program giving them the right to usufruct.
- Ownership right on the trees growing in the holding allotted to a tribal in a forest village should vest in him.
- If necessary, the State might assume the right to provide guidelines about land use and resource mobilization on communal, clan and private lands.

These recommendations, however, had been considered reasonably in the National Forest Policy, 1988, wherein it is stated that **“The holders of customary rights and concessions in forest areas should be motivated to identify themselves with protection and development of forests from which they derive their benefits”**. National Forest Policy thus acknowledged the rights of forest dwellers as legitimate and on the basis of that expressed intent to motivate them for meaningful participation in protection and conservation of forests. However, scholars who studied the tribal problems at depth further recommended that -

- The government should grant the raiyati rights to swidden cultivators upto 30° slope, if these lands are under cultivation as terraces, upland permanent dry fields or as swiddens, and beyond 30° slope, if these lands are under permanent tree crops as orchards or forests on the model of Odisha’s status rule for Survey and Settlement Operation in Kashipur Tahsil of Koraput district (now under Rayagada district).
- The Reserve Forests around revenue villages in Orissa and elsewhere, as also around forest villages, should be re-demarcated in view of the above to provide reasonable common property resources, so that the food gatherers, hunters and swiddener communities may be rehabilitated in situ in the hills and ensure other amenities to improve their quality of life<sup>7</sup>.

The policy of the Government to restrict shifting cultivation by imposing legal restrictions as stated in Draft Forest Bill 1994 was seriously criticised<sup>8</sup> at various levels. **Restricting shifting cultivation would mean denying the customary rights of the tribal people.** In the draft forest bill, provisions relating to the regulation of shifting cultivation had also been drastically expanded and a detailed procedure was worked out with a view to restricting shifting cultivation as far as possible. Dislike for the practice of shifting cultivation dates back to the British period and there are numerous instances of colonial bureaucrats condemning it as wasteful of forest resources, inefficient and ecologically destructive and calling for a ban on it. In fact, the colonial forest administrators did come down heavily on it and many communities were forcibly settled. This dislike of shifting cultivation has continued in post-British India, with the result that now the practice is restricted mostly to the hills of the north-east. The Bill proposed to constitute a new category of forests called “agro-forests”, where shifting cultivation is being practiced.

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<sup>7</sup> Mahapatra, L.K, 1994: Tribal Development in India: Myth and Reality, Vikas, New Delhi

<sup>8</sup> Ashwini Chhatre, ‘A Summary and Critique of the Draft Forest Bill - 1994,’ in “All about Draft Forest Bill and Forest Lands”, (Ed) Hiremath, S.R. et. al., 1994, Second Edition



Whenever the State Government wishes to protect forests owned by an individual or a community over which shifting cultivation is being practiced, under the provisions of the bill, it may declare the same as “agro-forests” in the manner provided in it (Sec. 38 F). The bill stated that State government shall appoint a settlement committee of a maximum of seven persons, ‘to enquire into the claims of individuals and communities, and determine their rights, privileges and concessions, alleged to exist in respect of the practice of shifting cultivation.’ The settlement committee shall forward its report to the state government, with its recommendations. The said government shall announce the award, “subject to such review as it may deem necessary”, within a year of the report of the settlement committee, and justify it in the official gazette.

Such notifications shall, as far as practicable, specify “the identities of the persons and communities in respect of whom rights, privileges and concessions to the practice of shifting cultivation have been admitted.” Besides, the boundaries of the agro-forest will be notified. The Central or State government may make rules to regulate the management of the agro-forest according to a management plan, issue guidelines for the preparation of the management plans and prescribe the minimum period of rotation of shifting cultivation requiring clearing of trees. Where forests are proposed to be reserved or protected, the state government will decide whether to permit shifting cultivation, in whole or in part, and where prohibited, extinguish it within a maximum period of three years, provided that it will not be permitted on slopes exceeding thirty degrees and permission for cultivation on slopes between ten and thirty degrees shall not be given without prior approval of the central government.

Several recommendations like the above have been forwarded by researchers and tribal development thinkers over the years in India. Land being the most important economic asset of the tribal communities, the same has been protected under customary rules of respective tribal communities. Wherever land settlement processes have been undertaken, local references have been taken in the beginning to demarcate the lands owned by families secured under customary rules approved by tribal self rule. The rule systems in tribal communities come directly under the purview of customary rights – the greatest weapon the tribals have to fight with the historical injustices made to them in terms of denying rightful possession over land by the State. In this context it is important to understand the customary rights in its theoretical framework and practical applicability.

### **Customary Rights related to Tribal land**

Customary rights are juxtaposed to statutory rights of a person, family or lineage or clan, village community or tribe. In the World Bank publication quoted by Roy Burman (1984) it is said ‘**one often comes across the conflict between statutory title of land and traditional land use pattern.** The State lays claim to areas of land which are ‘unused’ or “vacant”, but in fact the right to use these lands under traditional systems may be well defined and accepted. The tribal people who do not have the legal titles recognized by the State to land and other immovable land-based resources including forests, waterways etc., are reduced to the status of ‘encroachers’ (p.381).<sup>9</sup>

Customary rights have been recognized by the British colonialists whenever and wherever there was fierce resistance by the tribal people concerned. In the North Eastern India, the Khasi, Garo, Mizo and

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<sup>9</sup> Mahapatra, L.K., 2002. Customary Rights in Land and Forest and the State, in Pati and Dash (Ed) Tribal and Indigenous People of India, APH Publishing Corporation, New Delhi.pp 379-398

Kuki were brought under the Sixth Schedule of the Constitution, which allowed them to be governed under their customary laws and to enjoy their customary rights through their self governing, autonomous District Councils. This does not mean that the State laws and the State interventions are completely and forever inapplicable here. Sometimes the State has overriding authority. Under the fifth schedule, however, as in the case of the Scheduled Areas with the majority in tribal population, the Governor makes regulations and implements state laws to the extent that these are not disruptive and destructive to the tribal culture, society and economy in the Scheduled areas. But what is clear, is the fact that customary rights in regard to land and forest, mines and waterways, have been accorded statutory recognition by the State through the Sixth schedule<sup>10</sup>.

**In early British courts in India the customary rights were also consulted. But these customary rights operated clearly at the level of little traditions or at the best, of the regional traditions. 'Ontologically, there were no statutory rights before the emergence of State and ruling class, whose customary rights became more or less the statutory rights under the State.** When the Britishers came, they could not understand and appreciate the customary laws and the customary rights of the people of India. That is why Baden-Powell had already noted in the 19th century a hiatus between the perception of the people and that of the colonial government about the nature of the right of the people in respect of land resources'<sup>11</sup>.

**The UN document of 1966 defines customary rights as 'the rights to use or dispose of use-rights over land which rests neither on the exercise of brute-force nor on evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition or transmission of these rights being explicit and generally known, though not normally recorded in writing.** There are, however, criticisms. The customary rights are not transfixed forever and may change over time. There are instances of new and emerging customary rights in adaptation to a novel situation, availability of new resources, technological change or structural transformation. That is why, customary rights are very rarely given a time depth. A specific customary right is usually described as operating 'since time immemorial' unless it has a known historical origin or currency.

Customary rights over land and forest are usually expressed in bipolarization. Private, individual rights are pitched against collective rights. By 'collective rights' one usually refers to the rights of a group exercised by or on behalf of the group concerned. Such collective rights are commonly referred as 'communal rights'. **Communal rights may be exclusive rights of ownership and alienation, or right to control and manage resources, apart from the right to use or usufruct.** There is no necessary congruence between right to own, right to control, manage or command and right to use. Almost everywhere when there are communal rights, individual's rights, and even sub-group rights, are embedded in the communal rights. In the village or clan ownership of land or forest, the person belonging to a clan or village or such other grouping, have the right to use the resources and even control or manage them. Right to use under certain conditions or usufruct by the individual members of the sub-group invariably go with communal rights of ownership. Even when the State is the ultimate and absolute owner, as when we speak of the sovereign powers of the State, the customary rights may be

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<sup>10</sup> Ibid. 381

<sup>11</sup> Ibid. 382

exercised by the persons or the collectivity concerned in all manners short of claiming absolute rights of ownership<sup>12</sup>.

Justice Hidaytullah<sup>13</sup> argues, 'the awareness of ownership of land came when particular areas were appropriated for hunting or agriculture and when there was scarcity of well situated lands for occupation'. According to him property in the lands of members of a clan or tribe had dual meaning. While devolution of property was from the community to the individual, the devolution was subject to the control of the community. It could then be said that it belonged simultaneously to the community and the individual either alone or in a family group. According to him, a kind of 'secondary and subordinate ownership' is created when family clears uncultivated or unoccupied land belonging to the village or clan or lineage. The rights of the community were always primary<sup>14</sup>.

Roy Burman (1986)<sup>15</sup> notes that 'the formal status of ownership may be with an individual or family, but customarily the other members of the lineage or clan or local group may have defined rights of access to or share of the resources. On the other hand, while at the ideological level the land may be owned by the community, the decision making authority and effective possession may pertain to certain categories of individuals and families only'. He, therefore, emphasizes that 'it is more important to examine the pattern of access and possession, the terms and conditions of access, rather than the formal status of ownership.

Common Property Resources are a closely related concept. As CPRs are not always statutorily recognized by the State as belonging to tribal groups, who are often literally the internal proletariat, their customary rights over common property resources are the most substantive part of their style of life. In some tribal societies some varieties of common property resources are shared differentially between the first settlers' descendants and the immigrant latter settlers and not necessarily equally among all the households in the village.

The clan or lineage of the first settlers, who had cleared the forest and established the village, always claimed customary ownership of the land and land based resources within the traditional village boundaries. While the British Government had recognized the customary rights of Munda, Ho and Santhal, and in some measure, those of the Kandhas in South Odisha (Mutha as originally uni clan territories), the former Rajas of the ex-princely states of Bonai and Keonjhar had realized through tax in cash and some animal as tribute from the whole village of hill Bhuyan swidden cultivator for long time before land survey and settlement.

The customary rights in land may not be held exclusively by the first settlers only, but may be jointly held and enjoyed with others in the village. This is especially so in hunter gatherers or even the swidden cultivators, who do not have exclusive individual or group rights customarily over land and forests and their resources. When the customary rights over certain land and forests were allowed expressly to be enjoyed by another lineage or another village community outside, it was in the nature of a temporary concession, to be retrieved as and when necessary by the 'rightful' owner group. In a

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<sup>12</sup> Ibid 383

<sup>13</sup> Government of India, 1984, Report of the Working Group on Development of Scheduled Tribes during Seventh Five Year Plan, Ministry of Home Affairs, New Delhi

<sup>14</sup> Mahapatra, L.K. 383-84

<sup>15</sup> Roy Burman, B.K., 1986: Historical Ecology of Land Survey and Settlement in Tribal Areas and Challenges of Development, Council for Social Development, New Delhi

large majority of villages in the forest areas land was communal property, and the fruit trees in the forest could be utilized without restriction among the villagers, the trees planted on either one's own land or on some other's land belonged exclusively to the planter and his heirs. These ownership rights over trees are jealously safeguarded. Of special importance are the sago palms, transgression of the rights over which lead to blood feud among the Dongaria Kandha, for example. While there is intensity of sentiments around trees individually owned, the same is witnessed in respect of clan lands, which become easily the bone of contention between clans or between sub-clans of the same clan leading to blood feuds<sup>16</sup>.

### **Previous Studies in Odisha on Customary Law of Tribes**

During eighties and nineties, in pursuance of "National Policy" and Constitutional Provisions, the Working Groups on Tribal Sub Plan for the Seventh and Eighth Five Year Plans categorically recommended for compilations of tribal traditions and customs, mostly relating to family, marriage, kinship, maintenance, adoption and guardianship, inheritance, ownership and transaction of property, social control and administration of justice etc. in all States and Union Territories under a fully funded Central Scheme. Following this recommendation, the Ministry of Tribal Affairs (formerly Ministry of Welfare) had sponsored research projects on this subject. The work was mainly assigned to Anthropological Survey of India, Tribal Research Institutes and Law Research Institutes of different States.

Under this scheme, Ministry of Tribal Affairs sanctioned funds to the Tribal Research Institute (SCSTRI) of Odisha in shape of grant in-aid out of Special Central Assistance for implementing the research project for "Codification of Tribal Customary Laws" during 1986-87. Seven important tribal communities of Odisha namely - (i) Kutia Kandha, (ii) Lanjia Saora, (iii) Bondo, (iv) Juang, (v) Hill Kharia, (vi) Santal and (vii) Oraon were selected to be covered under this research project. Among these seven selected communities five i.e. the Kutia Kandha, the Lanjia Saora, the Bondo, the Juang and the Hill-Kharia are identified as 'Primitive Tribal Groups (PTGs)' that has been redesignated as Particularly Vulnerable Tribal Groups (PVTGs). However, there are still a majority of the tribal communities who are to be studied in this perspective.

Under the backdrop of the above the present study seeks to explore, document and analyze the tribal customs and traditions & customary mode of conflict resolution covering six important tribal communities inhabiting different pockets of South Odisha. They are Didayi (PVTG), Gond, Koya, Paraja, Bhattada and Kandha. Brief description about the communities has been presented hereunder.

### **Scope of the present study**

The cultural foundations of tribal traditions and customs have started weakening under the present circumstances of rapid social, economic and political change. In this situation, there emerges the need for exploration, documentation and promotion of unwritten, time tested valid tribal customs and usages, which have survived the test of time. Study of tribal customs and traditions is therefore useful for closer understanding of their society and culture. It is also necessary for their better administration and development.

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<sup>16</sup> Nayak, P.K., 1989: Blood, Women and Territory: An analysis of clan feuds of Dongaria Kandha, Reliance Publishing House, New Delhi.

In spite of all the protective laws to check the age old exploitation of tribal land and forest resources during pre-independence and post-independence times, the tribals problems relating to land and forest has not been solved very satisfactorily. Being members of simple societies, they follow their customary rules and usages relating to property which are oral in nature. This is different from the formal system of land laws introduced since the time of colonial rule and continuing at present. Hence, there is a conflict between both the systems. Now there emerges the need to bring about a synergy between the customary system and modern system which may be more acceptable to the tribal people.

The present study made an effort to explore, document and analyze the tribal customary laws and usages to suggest modifications in land laws relating to property, inheritance and land tenure. Under this study the customary laws of two selected PVTGs of Odisha namely Dangria Kandha and Paudi Bhuyan have been documented.

### **Relevance of the study**

Tribal customary laws are ubiquitous, existing in all tribal groups, cherished, adapted and regarded as intrinsic to tribal identity. This body of law survives even among the numerically small and fragile tribal communities. They have shown an extraordinary resilience and pragmatism in coping with onslaught of outsiders and preserving their institution and traditional law.

Both the customary law and the common law shall remain valid to the extent to which such customary or common law does not conflict with the Constitution or any other statutory law.

Institutions of social control at the village level and regional level among many tribes have been functioning even today. All customary laws have their social and super-natural sanction. Among many tribes social organization and built-in authority structure, like lineage, maintain the structural form of social control mechanisms. Social change appears to have caused erosion of customary laws in contact situations. There may have been situations where there is a conflict between State law and customary law.

Central to the body of customary law is the institution of tribal chief or tribal council which upholds the sanctity of law and enforces it. The tribal chief is the custodian of customary laws and resources; he allots *podu* plots and regulates use of water; he is intermediary between his people and government. The institution of tribal chief appears to be the strongest in many parts of Tribal India where the tribal system survives relatively intact.

The land governance system of tribal communities is by and large based upon their customary law since generations. The tribal communities had little conflict over land ownership, transfer, transaction when their customary law reigned supreme. The issues, however, cropped up when the constitutional law followed by the State interfered with their customary law. In other words the major land settlement process in the State fixed property rights in favour of particular individuals thereby restricting many informal transactions over such properties that have clear record of rights. On the other hand as regards to community rights it is simply understood and construed that the lands on which record of rights have not been issued is legally the government land. The tribal governance system under customary law systems also laid emphasis on the personal possessions and community possessions over land. The socio-political system of most tribal communities considered that the lands are primarily

owned by the village council and then the village council distributed land to individuals. When any individual having been in possession of land provided to him by the community does not continue to live in the village or does not cultivate the land for years together then the land was being taken over by village council and was being provided to any other who needed land. Such systems continued well till the settlement process was done and subsequently record of rights were provided to individuals who by evidence were physically in possession over particular land. The record of rights, in a way, became a limitation for the tribal socio-political system in exercising and operating its customary law systems. The system of informal distribution of land and taking over the land by village council when the land was long abandoned or disowning people from their land for socio-cultural reasons faced impediments due to constitutional law. Presumably, the constitutional law and the land settlement processes reasonably reduced the application of customary law to lands under individual possession by virtue of record of rights approved by the constitution.

The customary law as applies to land governance system of tribal communities still remained in vogue against the lands that have not been settled and legally considered as government land. The communities had to go with adaptive governance over land. The hill slopes where most of the tribal communities in Odisha continue shifting cultivation have not been settled properly. In the same manner the communal lands have also not been settled in many tribal areas. Thus, the customary law on land of the tribal land governance system is mostly concentrating around those lands and resources which are not legally belonging to the communities.

Within the purview of tribal land governance system the property inheritance pattern is subject to many social control mechanisms. There are situations, conditions and considerations within the traditional land governance system of the communities that determines the inheritance pattern. Although the commonly held principle is that the land inheritance happens along male line of decent, yet under conditions they may vary. There are also conditions under which the land is taken over by the village council considering certain crime, prejudice, violation of socio-cultural norms on the part of the individual or his family who possessed the land. Their rationalization of ownership of land under community governance systems may vary considerably with the constitutional law.

The customary law has been considered by legal systems as valid in certain aspects of land governance systems. The Panchayats Extension to Scheduled Areas Act, the Forest Rights Act are central Acts that have laid pronounced priorities on considering customary law in respect of providing the tribals their due share of land. The Forest Rights Act in particular has been promulgated to end the historical injustice done to the tribal communities about denying their legitimate authority over land. At the State level there are also many Revenue Acts and Rules formulated and implemented in the State, which, in certain respects also consider the customary law of the tribal communities.

When we are thinking about bringing about Synergy between Tribal Justice System and Regular Justice System of the Country, the codification of unwritten tribal customary laws becomes very important as that will serve as the first step in this direction. The Parliamentary Standing Committee has observed that the first prerequisite for an effective synergy between the tribal justice system and the regular justice system is the dedicated effort at codification of customary law of tribal communities. At present the tribal customary laws are oral in nature which is committed to the memory of a few key individuals in the village. Hence, codification thereof is a tough challenge for the State.

In the context as above the current study is a timely attempt towards a comprehensive study of tribal customary laws and their codification especially in case of the tribal land tenure systems, property inheritance and transactions. The need for their documentation and codification has been keenly felt at all levels; both in administration and judiciary.

### **Objectives of the Study**

The broad objectives of the study are as follows

- I. To develop a theoretical perspective of Customary law and its contemporary relevance comparing various legal instruments under Revenue, Forest, Panchayat and Social Justice domains
- II. To explore, document and analyse the tribal customary law and usages in the socio-cultural-economic-political life of Dongaria Kandh and Paudi Bhuyan PVTGs
- III. To specifically explore the customary law, rules, obligations, sanctions, modifications in relation to land and other liquid and fixed assets and the customary mode of dispute resolution
- IV. To identify spaces in existing State laws to dovetail the customary law related to land and other Common Pool Resources.
- V. To find out the extent to which the surviving age old customs and traditions have retained their stronghold especially in enforcing their unwritten code of conduct and the impact of culture contact and modernization.

### **Methodology**

The study was exploratory by nature and followed a descriptive design for presentation of the findings. Relevant anthropological methods and tools were used to elicit primary information. Extensive field work was conducted in the said tribal villages for gathering primary information relevant to the study. A checklist was used to cover the different aspects of the study. Individual interviews and group discussions were by and large the tools used to understand the domain and dimension of usage of customary law in general context and in specific context relating to land tenure systems. To understand the various contexts under which the customary law operates emphasis was laid upon gathering adequate case studies to suffice objectives of the study.

Thorough probing of secondary sources of information had been made. While it was difficult to find secondary sources dealing with land related customary law and their usages in respect of the two tribes taken for study, some references provided guidelines for studying the various aspects of the research problem. The secondary sources on the land laws and the forest laws were consulted to identify the spaces within existing statutory law to accommodate the tribal customary law. The subject of statutory law is huge and enormous literatures are available on that. Such literatures were not easy to understand and comprehend and confusions appeared every now and then. Thus, many subject matter experts were consulted to access the right literature and understand the basics relevant to the study.

A thorough probing was done in the court proceedings to identify specific cases relevant to the tribe and to the study. Many legal practitioners in study locations were consulted to find out specific cases, if any. However, probing through the court proceedings and consulting local legal practitioners did not yield any good result. It rather impressed upon the fact that customary law is subject to the jurisdiction

of a tribal community and operates within its ancestral domain. Most of the disputes are resolved at the community level for which cases tried in courts could not be found.

### **Checklist for data collection**

#### **1. Levels and Mechanism of Social Control**

1.1 Form and functions of tribal council both at village and regional levels (including the informal groupings like the group of village elders who sometimes settle the dispute within the hamlet)

1.2 Constitution — types of functionaries, mode of recruitment, kinship base-hereditary, selection and government nomination, etc., range of choice in selection of headman and other members

1.3 Spheres of social control, nature of cases deal

1.4 Other activities

1.5 Its authority to impose fine (amount), or inflict physical punishment and other means adopted like vilification and excommunication.

#### **2. Family**

2.1 Locus of authority

2.2 Types of family.

#### **3. Marriage**

3.1 Age of marriage

3.2 Bride-price

3.2.1 Amount of bride-price (cash, kind)

3.2.2 Nature of its payment

3.2.3 Recipient of bride-price

3.2.4 Who share it — father, mother or any other relatives

3.2.5 Conditions for the refund of bride-price (in case of divorce, death, etc.)

3.3 Forms of marriage (modes of acquiring a mate)

3.3.1 Local terms

3.4 Types of marriage

3.4.1 Polygyny/polyandry

3.4.2 Different types of polygyny/polyandry

3.4.3 Number of spouses

3.4.4 Time and circumstances in which each marriage took place

3.4.5 Do all the wives/husbands live together?

#### **3.5 Rules and restrictions of marriage**

3.5.1 Endogamy and other rules



3.5.2 Exogamy — clan, village, etc.

3.5.3 Incest rule

3.5.4 Prohibited consanguineous kin like grand-mother, mother, daughter, grand-daughter, brother's daughter, sister's daughter, etc.

3.5.5 Prohibited affinal kin like wife's mother, wife's elder sister, wife's sister's or brother's daughter, etc.

3.5.6 Prescriptive and preferential marriage - breach of prescriptions

3.5.7 Levirate - senior and junior

3.5.8 Sororate - senior and junior

3.5.9 Residence after marriage - patrilocal, matrilocal (in terms of domestic group, lineage, village, etc), matri-patrilocal avunculocal, etc.

3.5.10 Remarriage and social rules regulating

3.5.11 Remarriage of widows and divorced women with children or without

3.5.12 Where do the children born of previous marriage reside?

3.5.13 Social position and the legal rights of children born of remarriage

3.5.14 Marital right over widows as spouse

#### **4. Divorce**

4.1 Is divorce permissible in the society? How it is affected — local name, notion towards it

4.2 Grounds of divorce for a husband : viz. adultery, desertion, neglect of duties, contagious disease, barrenness, incompatibility of temperament

4.3 Grounds of divorce for a wife, viz. cruelty, impotence, neglect of maintenance, adultery

4.4 Other grounds, viz. witchcraft, sorcery, crime, etc.

4.5 Whether divorce is granted in the case of insanity or incurable disease of one of the spouses

4.6 Legal effects of divorce

4.7 Repayment of bride-price or any other compensation

4.8 Social and legal position of the children

#### **5. Adoption**

5.1 Rules and specific kin

5.2 Position of adopted son as heir or successor

#### **6. Children of unmarried women**

6.1 Legitimacy of child - mechanism and process of legitimization of illegitimacy

6.2 Identification of father and his duties and obligations towards such child.

6.3 Social stigma

## **7. Kinship obligation towards brother, sister, widow, mother etc**

### **8. Concept of Property**

#### 8.1 Different types of property

##### 8.1.1 Land and land tenure

8.1.1.1 Residential land - rights and nature of ownership, basis of right.

8.1.1.2 Arable land — distribution and demarcation, rights and nature of ownership.

##### 8.1.2 Livestock

##### 8.1.3 Produce-agricultural or non-agricultural

##### 8.1.4 Other movable property and right over it and basis of right.

### **9. Inheritance**

9.1 Modes of inheritance of landed property of married man/woman, unmarried man/woman

9.2 Principal heir-primogeniture, ultimogeniture, etc.

9.3 Woman as heir

### **10. Customary rights over natural resources**

10.1 Grazing right

10.2 Water right

10.3 Right over jungle for hunting, gathering, etc.

### **11. Succession**

11.1 Transmission of office like chieftainship, headmanship, priesthood, etc.

11.2 Eligibility of women for these office

### **12. Property transactions**

12.1 Transfer of property by gift, barter or sale

12.2 Permissive use of property

12.3 Service

### **13. Categorisation of social offences**

13.1 Wrongs against the person (defamation, abuse, assault, etc)

13.2 Wrongs against family (education of women, adultery, etc)

13.2.1 Differential treatment of adultery for men and women.

13.2.2 Responsibility among the adulterers.

13.2.3 Exception and permissiveness in respect of certain kin in regard to pre- and extra-marital sex relation.

13.3 Wrongs against property (trespass upon other's land, damage of crops, theft of livestock, etc.)

13.4 Other social offences like murder, homicide, rape, infanticide abortion, etc.

13.5 Attitude towards these offences

13.6 Punishment for such offences

13.7 Ritual expiation of an offender

**14. Case Records (as many as possible but not less than two of each type) from village and regional council or any other court.**

*Note:* Most of the data should be collected through case history methods. While collecting case records details of offence, the parties involved, month and year, decision, time taken for settling the case, etc., should be noted.

**Difficulties faced during the study**

The study followed an exploratory approach and mainly based on case studies related to land governance systems of the said tribal communities, administration of justice to resolve land related conflicts and to trace out case studies relevant to the subject of study. This required covering many villages, informants, leaders and the case subjects. It was realized that the customary law related to individual land allocation, possession, transfer, alienation, lease, mortgage, inheritance, and other transactions have been following the revenue law of the state. The cases that could be collected indicate that there has been very less land related conflicts over the past decades especially since the settlements were done. Thus the customary law system in respect of conflicts related to individual/family land matters is fading away. Adding to that many relevant cases of the past have been beyond the memory of people. There are very few people from the older generation alive who could have thrown light on the roots and branches of their customary law but due to limitations in terms of age, memory loss and incapacities not much could be extracted from them. On the other hand as regards to disputes over ownership of land in rare occasions there appears a dispute but gets resolved soon. The communal ownership of land is respected by people at intra and inter village level. Thus, the customary law related to the communal lands is in vogue in certain respects but not holistically. However, the research team has made a thorough probing for relevant cases and has made efforts to validate the cases by talking to the parties involved in the conflict. In many cases the research team members could not find the parties in conflict, many have died or shifted places or could not be contacted. Hence, for validation of the cases the team took help of village council members or Pirh members or Mutha members. The scope of study in terms of time and resources has its own limitations.

## Chapter -2

### Dongaria Kandha and Paudi Bhuyan: Subjects of study

#### The Dongaria Kandha

The Dongaria Kandha is one of the primitive sections of Kandha numerically the largest among the 62 tribal communities in Odisha. They are called so as they live on mountain tops or highlands. They relate to the proto-australoid stock with a considerable mongoloid admixture. Kuvi- a Dravidian Language is their mother tongue.

Ota and Mohanty<sup>17</sup> have presented a precise account of the community. According to them they stand apart from others for their famous Meria festival, expertise in horticulture, separate language - Kuvi and colourful dress, adornments and life style. For being the denizens of hills, forests and highlands (dongar), their neighbours name them Dongaria but, they call themselves 'Dongran Kuan' or 'Drili Kuan'. Dongaria men and women are quite fashionable in their personal adornments, that makes them attractive and distinguish them from others. Dongaria men put on a long and narrow piece of loin cloth in such a way that the two embroidered ends hang in the front and the back. This piece of cloth is termed, drili.

#### Habitat and Settlement

The Dongaria Kandha inhabits the lofty Niyamgiri hill ranges spread across Bissamcuttack, Kalyansingpur, Muniguda blocks in Rayagada district. The Kandha villages are located on the hill slopes or valleys in a tangle of thickly wooded hill ranges. The habitation site is chosen upon the availability of sufficient land for shifting cultivation and a perennial source of water.

It is indeed a feast to eyes to see in the Niyamgiri hills, vast stretches of banana and pineapple plantations amidst jackfruit trees in the hill slopes raised by the Dongaria Kandha. At the village entrance within mango and jackfruit trees the shrine of the village deity – Jatrakudi Penu is installed in a thatched shed. Its walls are painted with beautiful coloured geometric designs. At the other end, close to the hill streams lies the girls' dormitory. In the middle of the village street another thatched shrine (kudi) accommodates the Earth Goddess (Dharni Penu), the supreme deity. Close to the Kudi there stands beautifully designed and carved wooden posts representing the consort (Jhankar or Kateivali Penu) of Darni Penu.

The typical houses have low thatched roofs. Built upon a rectangular plan, it consists of a spacious rectangular room and another small room (Dhapa) at the back with verandahs in front and back. The living room is used for sleeping and dining. Often a ceiling like platform is built inside to store food grains and other sundry articles. A small partition wall separates the kitchen from the main room and keeps it out of sight of outsiders. Cattle are tethered to the wooden posts in the cowshed (Hada sala), built near the house.

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<sup>17</sup> Ota, A.B. & Mohanty, S.C. (Ed). 2007. Dongaria Kandha, SCSTRTI, Bhubaneswar

## **Dress and ornament**

Dongaria women use two pieces of cloth (Kapda-Ganda), each, 3-4 feet in length and one-and half feet in width. The first piece is wrapped round the waist with a knot in the front. The second piece covers the upper part of the body, like an apron. Dongaria men grow long hair to distinguish themselves from other sections of the Kandha and prepare braided locks, like the females at their scalps.

A wooden comb (Kokuya) is fixed at the hair knot of men and women which adorns the hair-lock and keeps the hair tight. A tiny knife (Pipli) with colourful thread balls at its metal handle, adorns the hair-lock of women that also serves the purpose of cutting as and when required. A variety of hairpins and clips enhances the beauty of the unique hair style of men and women. Dongaria men and women are very fond of beautifying themselves with a variety of ornaments. Men and women put on aluminum neck rings, beads & coin necklaces (Kekodikaj, finger rings in bunches. In addition to that women wear bangles, anklets, toe rings. Both the sexes wear earrings and nose-rings (Murma) with brass-made pointed sticks (Kulti).

**Food, drinks and stimulants:** The Dongaria eat three times a day. Seasonal cereals, pulses and vegetables viz, maize, millet, Kandul, Kating, Baila and Jhudang etc, tubers like Rani kanda and Langala kanda, fruits, green leaves and mushrooms are cooked and eaten. They relish non vegetarian items prepared out of fish, chicken, mutton, buffalo meat, pork and beef. They like to eat dried fish-baked on fire with their evening meal. They are very fond of Mahua liquor (irpi kalu) and Sago palm toddy (mada-kalu). Besides they also brew and drink Banana liquor (taade kalu) and Molasses liquor (guda kalu). Liquor is used as medicine, as ritual offering to appease deities and ancestors, to entertain friends and relatives. It is indispensable in many occasions. It is part of their life. They consume various narcotics and stimulant, like Kara, Dhungla, Kundeli and Chunga. Kara- prepared out of raw tobacco leaf and fine ash for chewing. Dhungla is chewing of raw tobacco.

## **Economy & livelihood**

Paucity of plain and wet lands and natural conditions has made them shifting cultivators. In their swiddens, called Haru they grow a variety of crops comprising cereals, pulses, legumes, fruits and vegetables, roots and tubers. A haru owned individually is cultivated for 3 - 4 years and left fallow for 4 -5 years for regeneration.

Dongarias are skilled horticulturists. Taking advantage of favourable climatic conditions they raise jackfruit, mango, citrus, banana, pineapple and turmeric plantations in vast stretches in the hill slopes right from valley bottom to the hill top. In their kitchen gardens (Bada) lying close to the settlement site they also grow mango, jackfruit and vegetables like gourd, pumpkin, bean, brinjal, chilly etc. Traditionally a Dongaria has indisputable right to plant fruit trees any where besides his own land and enjoy the fruits of his trees. They produce tons of fruits but earn less due to exploitation by middlemen.

Dongaria continue their age old subsistence activity of food gathering from the forest. Seasonal food collection is still an indispensable part of their economic life. Their food is greatly supplemented by a seasonal variety of fruits, roots and tubers, mushrooms, green leaves etc collected from the jungle. Besides the edibles, they also collect fire wood, timber and forest produce for their own consumption. It is a family affair and both the sexes take part in it.

They raise livestock, like buffalo (kodru), cow (kodi), goat (adda), sheep (mendha), pig (paji), dog (neudi), fowl (koyu) and pigeon (parua) for meeting the demands of presentations and for their own use in ritual occasions. They do not draw milk from cows and buffaloes. They believe it is meant for their calves. The animals are sheltered in their respective sheds.

Although wage earning is not preferred, they use to work for the members of their own community either on nominal payment or on labour-exchange basis. Among them, there is no employer-employee feeling and no demand for payment of wages. They treat each other as equals. Mutual exchange of labour is still in vogue, and traditional labour cooperatives based on age and sex continue to be functional till today.

### **Social life**

Mostly, family is nuclear, monogamous and patrilineal consisting of parents and their unmarried children. When a son grows up and gets married he sets up his own house and lives there with his wife and children.

The family acts as an economic unit. All the capable adults and children above 8 years of age toil in the field and contribute to the economic pool of the family. Men do the hard works and women, besides their routine housekeeping and child care engage themselves in farming and other subsistence activities. In swiddening practice they clean the bush, thorns and thickets, and do the sowing, weeding and harvesting. Property is inherited to sons only.

Life in a Dongaria Kandha family is very peaceful. Husband and wife are partners in all walks of life. They work together and have mutual respect for each other. Husband seeks his wife's advice in all social and economic matters. The older people are highly respected. Children obey their parents.

**Marriage** (Haidi): Grown up boys and girls enjoy freedom to meet and love each other, talk, crack jokes, exchange sweets, gifts and pleasantries and choose their mates for marriage. Boys and girls belonging to the same clan are considered brothers and sisters. Hence marriage within the clan is strictly prohibited. The Dongarias prefer adult marriage and arranged marriage. Payment of bride price is customary for acquiring an eligible bride. Demand for high bride price often leads to clan feuds.

Arranged marriages or marriage by negotiation, marriage by capture, and marriage by service are prevalent among the Dongaria society. When the boy is in infancy, his father goes to the girl's house with the marriage proposal. The girl's father receives many such proposals. But he usually agrees with the proposal that comes first to him. His agreement with the proposal is ensured by the acceptance of wine from the son's father. Marriage is postponed till the girl attains puberty. During the period from the day of engagement till the day of marriage, exchange of gifts and presentations take place between the two parties. In the meantime if any other young man captures the girl and takes her away, a serious dispute arises between them and heavy compensation is demanded, both by the girl's father and by the father of the boy with whom the negotiation was held. After the negotiation is resumed the boy visits the girl's house. If the girl's father offers food to him, it seems he has accepted him as his son-in-law. After these events, the girl's father with his kinsmen and clan brothers proceeds to the boy's house to settle the bride price (the cash or kind what is given to the father of the girl by the father of the boy). Generally it varies from Rupees five hundred to five thousand or more and 45 to

50 kilos of rice and four tins of liquor. Once the bride price is settled both the parties inform their respective clan members about the marriage and according to other ritualistic norms marriage is solemnized. Marriage rituals are observed by the poor and rich alike. Marriage within a clan is prohibited, because boys and girls of the same clan are considered to be brothers and sisters. This arranged marriage is considered as prestigious. Marriage by capture is the preferred type. Divorce is rare among the Dongarias. Polygamy is practiced by the capable Dongarias.

**Pregnancy & child birth:** The Dongaria believes that an ancestor is likely to be born. During the last month of pregnancy offerings are made to the ancestors and gods. Feasts are given to friends and relatives before delivery of the child. The delivery takes place in the back room (dhapa) of the husband's house with the help of a midwife. In case of any trouble, the whole village rises for help. A shaman or shamanin is called to conduct rituals for smooth delivery. The pollution period lasts for 21 days.

**Name-giving** (mila-daru), ear & nose piercing (ki-ka-patpikamu): When the child is about a month old, the Mila-Daru - name giving ceremony is performed. Maternal uncle and grand-parents are invited. Nose and ear piercing are conducted both for the male and female children. When the child is of six months old, a woman of the village, proficient in the art of piercing is invited. She pierces in four places at the ear-lobes and septum of the child with the help of thorns. After piercing, she inserts four neem-sticks there and applies castor oil or baked-turmeric paste to stop bleeding.

**Puberty Rite:** On her first menstruation the girl is kept in seclusion for a week in the Dhapa room of her house. On the seventh day, a Bejuni is called to invoke the spirit, Gangu Penu, to spare the girl. She conducts a ritual beside the stream, puffs the spirit away from the girl's body and sacrifices a chick to please the spirit. After this the girl takes bath and gets free from pollution.

**Death rites:** The Dongaria believes that, life (jarmana or jurma) and death (hateyas) are determined by the Supreme Being, Darani Penu who has created this world. The cause of death is attributed to malicious agencies, like the evil spirits, black magic or the wrath of gods and deities. They fight tooth and nail to save a person till his/her last gasp by administering their folk medicines and performing all sorts of magico-religious rites. The dead are cremated and the pollution lasts for two days only. On the second day, Jani conducts mortuary rite (karja-ki-manamu) at the altar of the ancestor spirits called Ghar-Dumba and Kandha Dumba. After this the departed soul is happily admitted into the rank of ancestors and does not harass his family members. Relatives, community members and neighbours are invited on this occasion to participate in a feast. A feast is arranged for the villagers, kith and kin.

### **Youth dormitory (da-sha-hada/adasbetta)**

As they grow up Dongaria boys and girls enter into the traditional youth organization i.e., the labour cooperative and the youth dormitory. Their dormitory is called da-sha-hada/da-sha-sika/ dhangdi sala/ adasbetta meaning unmarried girl's (da-sha) house (hada/hala). Unmarried boys, (ohangda) do not have any dormitory house. They sleep on some one's verandah in small groups and the sleeping place is known as dhangrenga duki. Da-sha-hada is located behind residential houses at the extreme end of the village near the stream. Boys and girls build and maintain it.

It is the place where the unmarried girls spend their night, sing and dance in open space. Here boys and girls meet, mix freely, dance and sing together, cut jokes, make friends, exchange gifts, and love

each other and choose their life partners. Sometimes married men join them but married women are not allowed.

Following clan rules, the boys of the same clan and village are not allowed to visit the girls in the dormitory in night. Only the boys of other clan and village are allowed. They come in late evening and leave before dawn.

It is also a training centre. Here girls learn from their seniors, the needle work of embroidery, the art of playing their traditional musical instrument, gaani, the techniques of living, the cultural practices, social values, customs, traditions, economic pursuits, folklores, arts and crafts.

The boys and girls form their respective labour cooperatives. Their services are requisitioned by the villagers for specific works. The income goes to a common fund that is utilized in arranging common feasts. By working, they learn the techniques of community life, living and livelihood, arts and crafts.

### **Religious beliefs and practices**

Dongaria strongly believes in the existence of a large number of Supernatural beings who exercise control on various aspects of their mundane life. Their pantheon is composed of Gods, deities and spirits- both benevolent and malevolent.

Goddess Mother Earth, called Darani Penu or Jhankar is their benevolent Supreme Goddess. In every village street She sits in a hut called Kudi represented by three elevated stones. Her consort Kotebali Penu, represented by a big vertical stone with crossed wooden pole (munda) at its back lie at the back of Kudi. He watches the village and protects its inhabitants from mishaps. He is regarded as village deity worshipped with Darani Penu. Jatrakudi Penu is installed at the village outskirts in the shades of a grove he watches the conduct of the villagers and never excuses any one. Hira Penu, a female deity considered the maid servant of Takrani Penu is worshipped with the later. Niyam-Raja Penu, a male deity, represented by a sword is worshipped during Dasara and Jura Parab. He saves the people from unnatural deaths and accidents. Lahi Penu or Dongar Penu, a male deity is worshipped by the Shamanins during April-May (Baisakh Lenju) after which trees are felled in the swiddens. Lada Penu is the forest deity who resides under a banyan tree at the entrance of the forest. She is worshipped with Lahi Penu by the Jani in the month of May before onset of communal hunting. She protects the people from attack of wild animals and grants them success in hunting. Household Spirits (Dumba) is represented by a wooden post (tuli Munda) inside the sleeping room of each house is regarded as the 'ancestor spirit' who can be dreadful if not appeased properly. Lai-Penu, Sita Penu, Danda Penu, are the other female spirits who are worshipped at different periods of year for prosperity, crop protection and crop production. The Chhatar Penu, a male spirit is worshipped by the Bejuni inside the house during Meria festival. Bhairo Penu is a harmful male spirit who can cause accidental deaths in the family if not appeased with the sacrifice like a cow by the Bejuni during Meria festival. The well known malevolent spirits includes Mieli-Penu, Buru Penu and Suka Penu who intentionally harass people with different diseases and cannot be satisfied by ordinary shamans except the Bejunis.

Ghanta Parab, Salangi, Mandia Rani, Dhan Nuakhia, Pidika, Punapadi, Dongar Puja, Meria Puja, Bihan Puja or Sadrangi Laka are important regular festivals and rituals in their agricultural and ritual calendar. Meria festival is the biggest and most important festival observed communally in any one of



the villages of a Mutha for 8 days during January-February in which people of other Muthas participate too. Their dance forms are Kedu Dance, Bali Parab, Dhap Dance and Meria Parab dance.

Religious functionaries: Dongarias have many kinds of magico-religious functionaries and specialists who act as people's representatives to mediate between humans and supernatural powers. Jani is the ritual head of the village. This post is hereditary. He performs all village rituals along with his assistant called Ichan Jani and gets a special share of sacrificial animals. Lamba - the specialist Jani who belongs to Nishka Mutha officiates in the rituals of Meria festival. Pujari is superior who plays a special role in Meria Puja. He strikes at the head of Meria animal first and then others follow. In other religious functions, he also presides along with Jani and Ichan Jani. Beju - Bejuni (Shamans and Shamanins) are the divination specialists. Through divination, prayer and rites, they get into trance and communicate with spirits responsible for causing mishap. He/she also practices both black and white magic. Dishari is the astrologer and medicine man who practices herbal medicines backed by magical powers.

### **Social organization - Mutha**

Mutha is an important feature of social and political organization of the Kandhas. It consists of a group of adjoining villages and is treated as an administrative-cum-social unit. It is led by a head designated as Mandal. The entire area has been divided into 21 Muthas. This organization has received recognition from the ex-feudatory set up.

Meria festival is biggest and most important festival observed communally in any one of the villages of a Mutha for 8 days during January-February in which people of other Muthas participate too. This festival is dedicated to the Supreme Goddess, Darani Penu, and Her disciples and all other deities and spirits. If there is no good harvest, this expensive festival may be postponed to the next year.

### **Traditional village council, office bearers and functions**

Traditional village council is composed of household heads and village leaders. The council handles matters like inter-personal conflicts and feuds, breach of taboos and customs, offences committed by anybody, property sharing in case of a family partition, property inheritance cases, irksome love affairs, adultery, etc.

At the village level, a set of traditional leaders and village council exercise control. Jani, the priest, is formal secular and ritual head of the village and village council. He presides over the village council meetings. He is the custodian of norms, customs and social sanctions. All important matters are brought to his notice for opinion and intervention. Depending on the gravity of the matter, he may convene a meeting of the village council to decide the issue or may settle it himself. He fixes dates for various meetings, rituals, ceremonies, feasts and festivals in consultation with other leaders and village elders and participates in all events in family, lineage and village levels. His post is hereditary. He does not demand any remuneration for his services but the villagers offer him the head and good share of meat of sacrificed animals in communal rituals and hunts. He holds the highest and prestigious post in the village and commands respect from his fellow villagers.

Bishmajhi is the revenue collector and village fund manager, whose secular position comes next to Jani. He collects land and forest revenue from the households of the village and fines imposed on offenders by the village council. He presides over the village meetings in absence of Jani. He fixes up the rate of

subscription for communal feasts and festivals in consultation with the Jani. He assists Jani in all social and religious events. Like Jani, he does not get any remuneration.

Barika is the village messenger who belongs to Domb community. He circulates news around the village about important events, such as death, birth etc, summons people and leaders to the village meetings, collects cash or grains from the villagers on the headman's instructions. His presence is necessary in all village meetings. He accompanies the villagers to deposit land and forest revenues at Bissamkatak. He being an Oriya knowing man, is the liaison between the villagers and outsiders. He arranges petty loans for the villagers. He fixes rates for each produce to be sold in the market by the villagers. He assists the village youth in the bride capture and bride-price fixation and intra-clan disputes. He reports criminal offences to the police in consultation with Bishmajhi and Jani. For his fees, he gets about 5 kilograms of ragi or kosla rice from each household during harvest. Besides, he also collects cooked rice every day from each household.

The statutory Panchayat Raj system has created a set of elected leaders like Ward Member, Sarpanch and Block/ Zilla parishad Chairman. They act as the spokesmen of the people and look after development works liaising between the people and government and other external agencies. Well to do and resourceful persons are elected for these positions. They exercise influence on the people and in the process of decision making.

### **Traditional Village Council (Sabha)**

It is composed of household heads and village leaders. The Jani convenes the meeting. Barika informs one and all. The council discusses matters of common interest and deals with customary affairs. The topic is generally initiated by the Barika and all members freely participate in the discussion. The accused and the aggrieved are called to explain their positions. The council may depute the Barika and other elderly persons to make further enquiries in the matter and attempt for reconciliation if possible. Decisions are taken unanimously. The council handles matters like inter-personal quarrels, breach of taboos and customs, offences committed in drunken state, partition of joint families, inheritance cases, irksome love affairs, adultery etc. The offenders are fined in shape of cash and or kinds of liquor bottles.

### **Changing scenario**

Dongaria say "We are Paroja Logu (subjects). We are happy with our Dongar chasa (Hill cultivation] and do not like Pada Desia (outsider)". With this attitude they lived in isolation in their remote mountainous habitat segregated from the outside world by natural barriers for centuries keeping their culture and cultural identity intact.

Development interventions were made during British regime from the late 19<sup>th</sup> century though the Kandha territory was later declared as a Partially Excluded Area. Formal tribal development policy and programmes were evolved after independence. But after the establishment of Community Development Blocks in the Dongaria Kandha area, the Dongaria Kandha is frequently coming in contact with the outside world. The process of change has put them in a transitional phase. But they are still in the mooring of their traditional way of life.

After adoption of Tribal Sub-Plan (TSP) Approach from the 5<sup>th</sup> Plan period development of Dongaria Kandha is being looked after by the dedicated agencies such as two Integrated Tribal Development

Agencies of Gunupur and Rayagada and two Micro Projects i.e., Dongaria Kandha Development Agencies (DKDA) of Chatikona and Parsali, all operating in Rayagada District.

The impact of planned change and modernization are visible in their way of life. On the other side, their traditional dormitory and kinship organizations are weakening. The Dongaria are in a state of flux. Old customs, beliefs and values still hold good. In spite of the changes, their social structure has retained many of its basic characteristic features.

**Table No. 1**

**Demographic profile of Dongaria Kandha under DKDA (Kurli) Chatikona, Rayagada**

Sl. No	Name of Tahsil	Name of GP	Name of village/ Hamlet	No. of families	Total population (Baseline survey - 2015)		
					Male	Female	Total
1	Bissamcuttack	Kurli	Kurli	47	80	99	179
2	Bissamcuttack	Kurli	KudavaliPadar	10	20	18	38
3	Bissamcuttack	Kurli	Hundijali	47	74	129	203
4	Bissamcuttack	Kurli	Mundabali	34	80	91	171
5	Bissamcuttack	Kurli	Hutesi	25	43	66	109
6	Bissamcuttack	Kurli	Thuaguda	12	22	31	53
7	Bissamcuttack	Kurli	Kadraguma	42	74	112	186
8	Bissamcuttack	Kurli	Khambesi	144	261	349	610
9	Bissamcuttack	Kurli	Uparaguma	37	70	73	143
10	Bissamcuttack	Kurli	Batiguma	56	77	106	183
11	Bissamcuttack	Kurli	Jangajodi	37	61	78	139
12	Bissamcuttack	Kurli	Gartali	44	84	124	208
13	Bissamcuttack	Kurli	Khajuri	86	177	210	387
14	Bissamcuttack	Kurli	Arisakani	10	15	21	36
15	Bissamcuttack	Kurli	Patalamba	21	34	41	75
16	Bissamcuttack	Kurli	Radanga	49	93	130	223
17	Bissamcuttack	Kurli	Gandili	37	56	85	141
18	Bissamcuttack	Kurli	DangaraRanibandha	14	29	33	62
19	Bissamcuttack	Kurli	LahuniKhunti	9	11	21	32
20	Bissamcuttack	Kurli	Sagadi	16	32	38	70
21	Bissamcuttack	Kurli	Hingabadi	29	55	76	131
22	Bissamcuttack	Kurli	Bandali	35	69	100	169
23	Bissamcuttack	Kurli	Kirida	14	26	37	63
24	Bissamcuttack	Chancharaguda	Kinjamjodi	26	41	70	111
25	Bissamcuttack	Chancharaguda	Balapai	7	12	17	29
26	Bissamcuttack	Hatamuniguda	Kodiguma	14	18	32	50
27	Bissamcuttack	Hatamuniguda	Boriguda	5	8	10	18
28	Bissamcuttack	Hatamuniguda	Kucherla	15	17	37	54
29	Bissamcuttack	Hatamuniguda	Tanda	32	49	83	132
30	Bissamcuttack	Hatamuniguda	Taladuargudi	22	41	54	95
31	Bissamcuttack	Hatamuniguda	Uparaduaragudi	18	32	57	89
32	Bissamcuttack	Hatamuniguda	Paramaguda	15	10	25	35
33	Muniguda	Munikhal	Merkabondali	34	69	72	141
34	Muniguda	Munikhal	Shrambi	45	67	89	156
35	Muniguda	Munikhal	Panchakodi	8	11	14	25
36	Muniguda	Munikhal	Kaliaripeta	29	44	66	110
37	Muniguda	Munikhal	Monda	13	25	28	53
38	Muniguda	Munikhal	Sakata	23	37	49	86
39	Muniguda	Munikhal	Gulugula	26	55	69	124

40	Muniguda	Munikhal	Trahali	10	15	19	34
41	Muniguda	Munikhal	Badabada	3	7	7	14
42	Muniguda	Munikhal	Garata	17	34	46	80
43	Muniguda	Munikhal	Sutaguni	25	34	50	84
44	Muniguda	Munikhal	Sanadenguni	20	45	52	97
45	Muniguda	Munikhal	Denguni	40	85	85	170
46	Muniguda	Munikhal	Jiniguda	14	32	37	69
47	Muniguda	Munikhal	Dhamanapanga	41	76	106	182
48	Muniguda	Munikhal	Kota	20	33	47	80
49	Muniguda	Munikhal	Kucherli	20	33	42	75
50	Muniguda	Munikhal	Ambadhoni	61	85	126	211
51	Muniguda	Munikhal	Salapajhola	22	53	58	111
52	Muniguda	Munikhal	Gunjapai	22	48	55	103
53	Muniguda	Munikhal	Odapanga	15	22	43	65
54	Muniguda	Munikhal	Surudipai	3	3	11	14
55	Muniguda	Munikhal	Gailanga	2	4	6	10
56	Muniguda	Munikhal	Sargipai	11	22	33	55
57	Muniguda	Sibapadara	Khambesi II	30	47	62	109
58	Muniguda	Sibapadara	Jarpa	8	16	14	30
59	Muniguda	Sibapadara	Serkapadi	24	39	52	91
60	Muniguda	Sibapadara	Kesarapadi	19	33	52	85
61	Muniguda	Sibapadara	Batudi	19	34	43	77
62	Muniguda	Sibapadara	Naringabadi*	00	00	00	00
	2 Tahsils	5 GPs	62 habitations	1633	2879	3886	6765

Source: SCSTRTI: Baseline survey report of 2015

**Table. No. 2**

**Demographic profile of Dongaria Kandha under DKDA Parsali, Rayagada**

Sl. No	Name of Tahsil	Name of GP	Name of village/ Hamlet	No. of families	Total population (Baseline survey – 2015)		
					Male	Female	Total
1	Kalyansinghpur	Parsali	Talua (Forest)	5	5	7	12
2		Parsali	Patalamba	18	26	33	59
3		Parsali	Kansaro	18	28	56	84
4		Parsali	Bhaleri	4	5	6	11
5		Parsali	Tuta (H)	23	38	55	93
6		Parsali	Parsali(H)	17	31	39	70
7		Parsali	Pakeri(H)	64	106	172	278
8		Parsali	Keletipadar(FV)	3	6	9	15
9		Parsali	Nirgundi	8	11	19	30
10		Parsali	Nisikhal	21	33	54	87
11		Parsali	Sarijhula(FV)	12	17	20	37
12		Parsali	Sano Dengneli	32	65	56	121
13		Parsali	Bado Dengneli	14	21	21	42
14		Parsali	Guma	43	84	105	189
15		Parsali	Lamba	30	56	65	121
16		Parsali	Dangamati(H)	30	55	86	141
17		Parsali	Patangpadar(H)	12	17	26	43
18		Parsali	Lakpadar	33	55	86	141
19		Parsali	Damagada	6	7	8	15
20		Parsali	Mayabali	13	17	25	42
21		Parsali	Kurusumui	17	35	37	72
22		Parsali	Chatikona	16	28	22	50
23		Parsali	Bemberi(H)	9	15	26	41
24		Parsali	Buduni	20	36	44	80

25		Parsali	Tadumui(FV)	6	11	10	21
26		Parsali	Tentulipadar	9	15	15	30
27		Parsali	Tamkosili	19	33	39	72
28		Parsali	Bangopadi	15	23	29	52
29		Parsali	Paramali	19	43	43	86
30		Parsali	Panchkudi	27	47	50	97
31		Parsali	Sikopadar	6	11	14	25
32		Sunakhandi	Kadraka Bandeli (H)	49	75	112	187
33		Sunakhandi	Tebakada	26	27	54	81
34		Sunakhandi	Railima	55	70	125	195
35		Sunakhandi	Talo Musudi	10	13	26	39
36		Sunakhandi	Upar Musudi	18	32	40	72
	1 Tahsil	2 GP	36 Habitations	727	1197	1634	2831

Source: SCSTRTI: Baseline survey report of 2015

**Table No. 3**

**Private land holding by villages under DKDA Chatikona**

Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.	Sl. No.	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.
1	Kurli	12	150	32	Paramaguda	15	70
2	KudavaliPadar	3	45	33	Merkabondali	35	195
3	Hundijsali	3	205	34	Shrambi	7	205
4	Mundabali	15	175	35	Panchakodi	0	30
5	Hutesi	2	120	36	Kaliaripeta	4	155
6	Thuaguda	2	0	37	Monda	0	80
7	Kadraguma	2	125	38	Sakata	12	90
8	Khambesi	35	412	39	Gulugula	5	150
9	Uparaguma	0	115	40	Trahali	0	40
10	Batiguma	5	155	41	Badabada	0	12
11	Jangajodi	8	140	42	Garata	8	85
12	Gartali	3	120	43	Sutaguni	13	180
13	Khajuri	12	340	44	Sanadenguni	0	100
14	Arisakani	6	36	45	Denguni	10	208
15	Patalamba	8	80	46	Jiniguda	0	75
16	Radanga	28	160	47	Dhamanapanga	20	195
17	Gandili	20	212	48	Kota	5	125
18	DangaraRanibandha	2.5	75	49	Kucherli	3	65
19	LahuniKhunti	10	80	50	Ambadhoni	15	275
20	Sagadi	1.5	80	51	Salapajhola	12	138
21	Hingabadi	2	125	52	Gunjapai	10	150
22	Bandali	1	175	53	Odapanga	2	85
23	Kirida	0	65	54	Surudipai	7	22
24	Kinjamjodi	1	130	55	Gailanga	8	12
25	Balapai	5	30	56	Sargipai	2	65
26	Kodiguma	20	115	57	Khambesi II	5	0
27	Boriguda	17.5	30	58	Jarpa	0	0
28	Kucherla	1	65	59	Serkapadi	8	115
29	Tanda	2	185	60	Kesarapadi	4	109
30	Taladuarugudi	9	95	61	Batudi	2	105
31	Uparaduarugudi	2	118	62	Naringabadi*	0	0
Total Revenue Land – 158 Ac., Total FRA land – 352 Ac							

Source: SCSTRTI: Baseline survey report of 2015

**Table No. 4****Private land holding by villages under DKDA Parsali**

Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.	Sl. N	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.
1	Talua (FV)	0	4.40	19	Damagada	8.93	9.10
2	Patalamba	235.31	24.00	20	Mayabali	168.51	34.40
3	Kansaro	3.22	-	21	Kurusumui	421.60	28.00
4	Bhaleri	2113.11	-	22	Chatikona	772.64	34.00
5	Tuta (H)		27.10	23	Bemberi(H)		13.50
6	Parsali(H)		10.60	24	Buduni	421.43	-
7	Pakeri(H)		93.80	25	Tadumui (FV)	189.04	-
8	Keletipadar (FV)	0	2.00	26	Tentulipadar	339.27	15.60
9	Nirgundi	159.22	10.70	27	Tamkosili	26.55	47.67
10	Nisikhal	40.38	19.75	28	Bangopadi	150.56	12.80
11	Sarijhula FV)	0	5.96	29	Paramali	397.49	42.20
12	Sano Dengneli	168.51	58.73	30	Panchkudi	993.12	49.20
13	Bado Dengneli	325.47	20.00	31	Sikopadar FV		-
14	Guma	344.05	59.50	32	Kadraka Bandeli (H)		76.20
15	Lamba	282.55	38.60	33	Tebapada		57.90
16	Dangamati (H)	957.07	47.20	34	Railima	291.57	116.80
17	Patangpadar (H)		23.10	35	Talo Musudi	1139.09	-
18	Lakpadar		35.00	36	Upar Musudi		-
Total Revenue Land – 9948.69 Ac., Total FRA land – 1010 Ac							

Source: SCSTRTI: Baseline survey report of 2015

## The Paudi Bhuyan

The Paudi Bhuyan, a major section of the historically famous Bhuinya tribe are found in Bihar, Odisha, West Bengal and Assam. They are also well known as Hill- Bhuyan and found in Sundargarh, Keonjhar, Mayurbhanj, Sambalpur and Angul districts of Odisha. It is one of the identified Primitive Tribal Groups (PTG), redesignated as Particularly Vulnerable Tribal Group (PVTG) since 2009, of the State and reveals its distinctive socio-cultural features. It is not possible to give exact population of Paudi Bhuyan as this section of population has not been enumerated separately by census. The Paudi Bhuyan mostly inhabits in hills and mountainous forest areas are geographically isolated. Many Paudi Bhuyan villages are devoid of all weather roads because of geo-physical constraints. Areas around the Paudi Bhuyan settlement are without thick forest due to practice of slash and burn type of rotation cultivation. The Paudi Bhuyan villages are mostly located on hill slopes, valleys and on top of hills. The villages are full of mango and jackfruit trees and during rains the settlements become swampy with thick forest growth, in and around. A handbook on Paudi Bhuyan<sup>18</sup> published by SCSTRTI provides brief but comprehensive account on the community.

### Legends stating origin of the community

There are many legends describing the origin of Paudi Bhuyan as a pious community. The Paudi Bhuyan and the Juangs are considered having same parentage but because of certain accounts they have developed hate towards each other. Two legends that are widespread states about the origin of Paudi Bhuyan and Juang and their hierarchial relationship is worth mentioning here.

According to a Paudi legend Juangs and Bhuyans are two brothers and the successors of a Rishi (seer). The Rishi had two sons named as Janeik Rishi and Aneik rishi. Juang is the son of Janeik Rishi while Bhuyan is the son of Aneik Rishi. Janeik Rishi, being the elder among the two brothers, places Juang as the elder and higher in social hierarchy to Bhuyans who are the sons of Aneik Rishi, the younger one. But in practice Bhuyans regard Juangs as socially lower to them due to certain bad practices by the Juangs in the past<sup>19</sup>.

Both Juang and Bhuyan were going to a foreign place together. On the way they saw a beautiful woman, whom Bhuyans define a demon. She was bathing naked. Both the brothers were lured by the woman. As any sort of interaction with her would be bad and would devalue their society, the Bhuyan restricted the Juang from interacting with the woman. After walking a little ahead, the Juang told the Bhuyan that he had a call of nature and he left the Bhuyan waiting at that place. After few hours when the Juang did not return the Bhuyan went on searching for him. And he, at last, found the Juang getting married to that Demon and eating cow's me at with her. Bhuyan got angry and left elder brother Juang there. Latter Juang is made out-group by the Bhuyan as a result of the sin he had committed by marrying a demon and eating cow meat<sup>20</sup>.

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<sup>18</sup> Ota, A.B.& Sahoo, A.C. 2010. The Paudi Bhuyan, Scheduled Castes & Scheduled Tribes Research and Training Institute (SCSTRTI), Bhubaneswar

<sup>19</sup> <http://www.researchgate.net/publications/291831028> : Love and Marriage Practices among the Paudi Bhuyan Tribe in Keonjhar District of Odisha/ India

<sup>20</sup> ibid

## **The community in pages of history**

The Bhuyan including Paudi Bhuyans are well known for their association with the local royal family. They are attested in the pages of history of Orissa as a militia class to rebel against the rulers on two occasions, first in 1868 because of installation of one Dhanurjay Navayan Bhanj as king, and 1891 against the bethi system (labour without wage) adopted in the construction of an earthen dam for water supply to Keonjhar town. Historical accounts on land settlement in Keonjhar provide that Janardana Bhanj made the first settlement of the state. Plough Tax, House Tax and Handia Tax were imposed by him. The system of bethi and maguns fell cruelly on the people. The Bhuyan's were the worst sufferers. They were not allowed to meet the Raja to put forth their grievances before him<sup>21</sup>. All these oppression and heavy taxation led to Bhuyan's to revolt against the authority. The immediate cause of the Bhuyan rising of 1867 was the succession issue. According to the prevailing custom, every Raja of Keonjhar must be consecrated by the Bhuyan Sardars in a ceremonial fashion at the time of coronation.

According to the Paudi Bhuyan, they were being administered by the king before coming under British colonial rule during pre-independence period. As the Bhuyan legend explains, there was no king-ship tradition among the Paudi Bhuyans. They stole a prince from Mayurbhanj (a border district) kings' dynasty to make him their king and to celebrate with a statehood status. As the Bhuyan history depicts, there has been marriage between the kings with the Bhuyan women at various time.

The Paudi Bhuyan speaks local Odia which is pronounced differently. They are strong and stout with muscular body and medium height. The male persons usually put on dhoti, banyans and shirts and women wear Saree and blouse. They also adorn their body with traditional ornaments like bangles, armlets, anklets, necklaces, nose rings, earrings etc. made of different metals. The women decorate their buns with hairpins and colorful flowers.

## **Territory**

The Paudi Bhuyan territory, called Bhuyan Khanda is spread over parts of Keonjhar, Angul, Deogarh and Sundargarh districts. As per information by the Bishnu Charan Dehuri of Kendujhar and Kalia Dehuri of Sundargarh, the boundary i.e. Tintalia Malibenua of Bhuyan Khanda was delineated by joint decision of the then King of Bonei, King of Deogarh and King of Kendujhar Garh. Thus the Bhuyan Khanda extends from Kendiri on the east to Bonei on the west, Singhbhum on the North to Pallahada on the South. Pirh is the administrative unit of the Bhuyan Khanda. There are 7 Pirh comprising 32 villages in Sundargarh district, there are 6 Pirh in Keonjhar district and one Pirh in Deogarh district.

## **Sub-groups**

Bhuyans at the beginning, provided the king with own women and girls, as co-wives and servants. The children from such marriages with the king were later identified as Rajkuli Bhuyans (Bhuyans from king's blood) (Mishra 1960<sup>22</sup>). Similarly, Kuthi (palace) Bhuyan is one among the Bhuyan categories, which the Paudi Bhuyans define, as the descents of socially unrecognized relationship between king and Bhuyan women, working in the royal palace.

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<sup>21</sup> Orissa JudicialRecords,Vol.I7,W.B.Bmiey to T.Pakenham,No.583,II May 1865

<sup>22</sup> Mishra, K.C. 1960. 'Bhuyan Jati',Adibasi, The Journal of Tribal Research Institute, Orissa, 4:88-117



Local information suggests that there are 12 sub-groups of Bhuyan. They are Paudi Bhuyan, who live on hills; Rajuadi Bhuyan, who used to be in charge of the King's horses and elephants; Mala Bhuyan, who live on the plains; Bentikar Bhuyan, who accompany the King on hunting expeditions; Rautal Bhuyan, who live in Keonjhar side; Tala Bhuyan, apparently land less who live on the valleys; Upar Bhuyan, who live on higher valleys; Paik Bhuyan, who constituted major part of King's militia; Sabar Bhuyan are those occupational groups who used to go on hunting expeditions carrying bow and arrows; Khandayat Bhuyan are those who formed the sword fighters in Royal militia; and Singi Bhuyan are those who migrated from Singhbhum area. The Rajuadi Bhuyan felt themselves superior on account of their proximity to the Royal family. In past, the Rajuadi Bhuyan was not keeping any marital relationship with Paudi Bhuyan.

### **Settlement and housing pattern**

Their area is rich in sal forests. In each settlement, stretches of land are usually available to provide the people scope for slash and burn type of rotation cultivation. As they live in forests they are bound to depend on it for their livelihood. They carry on food gathering and hunting in the forest.

The youth dormitory 'Darbargarh' is usually constructed at the centre of the village. This is the house meant for the unmarried boys of the village where other male members are also allowed to take rest on several occasions. It also serves as guest house, granary of the village, and also a place where village level disputes are decided. The musical instruments and decorative are also kept there. The village deity house or Thakuranighar is constructed near the dormitory. Moreover, at one side they install Gaisiri Khunta made of a piece of carved wooden pillar. This pillar represents the village deity where ritualistic observances are held on different occasions.

The dormitory organization is losing its striking features under the impact of modernization. However, many Paudi Bhuyan have retained their identity and striking socio cultural characteristic features. The Paudi Bhuyan villages comprise 5 to 20 families and a few villages are also there having about sixty families. The Juang, Munda and Kolha tribes and Hindu caste people, like Gouda, Kamara, Gudia, Khandayat etc live in their close proximity. Previously the Paudi Bhuyan were changing their village sites specially when the forest around the village are exhausted and villagers suffered from divine curse leading to spread of epidemics, tiger menace, breach of cholera and repeated crop failures. When Gaisiri Khunta is broken or uprooted they take it as divine warning for changing the village site. While selecting a new site, they give importance on perennial water sources and virgin forest at close proximity. Moreover, successful divination in omen reading on the proposed site is equally vital for selection of a new site to establish a settlement.

The Paudi Bhuyan houses are very neat and clean. The walls are plastered with cow dung and locally available red earth. The women are very conscious of keeping the house attractive throughout the year. The houses in a village are dispersed here and there within a particular boundary. Each family maintains its house with a kitchen garden where they grow pumpkin, gourd, chilly and other vegetables along with maize. During winter they grow tobacco and mustard there. The cow sheds are constructed close to the living house. The construction of a new house is started usually on Wednesday or Friday. The house heads undertake a ritual to appease the concerned deity.

The living house of the Paudi Bhuyan is rectangular in shape having sloped thatched roof supported by wooden rafter and pillars. Walls are plastered with mud. Doors are made of bamboo splits and well

to do people use wooden frame for doors and planks for shutters. They make verandah at all sides of the house. The house is divided into three distinct portions. The inner most portions is meant for storing grains and important articles of the house. Middle portion is used for cooking and ancestral spirits are installed there. The same room is also used for sleeping. The area having the hearth is considered sacred and outsiders are strictly prohibited to enter inside, because the ancestral spirits may get angry and make the family members suffer. A separate shed is built for guests, outsiders, and women during delivery. Buffaloes and cows are kept in separate shed. Goats and chickens are given shelter in one side of the living house.

The Paudi Bhuyan mainly used earthen ware vessels, which are getting replaced by aluminum ones. However, earthen ware jar, gourd vessels, date palm leaf mats, wooden cot, leaf umbrella, rain hats, broom sticks, bamboo baskets, pestle, grinding stone and roller, axes, knives, ploughs, bow and arrow, kerosene lamp, grain bins etc are some of the common materials in a Paudi Bhuyan house.

### **Economic life**

The Paudi Bhuyans are shifting (Kamana) cultivators. A patch of forest land brought under shifting cultivation is called Biringa. At individual family level the Paudi Bhuyan get ownership for cultivation of Biringa but after it is left fallow it belongs to the village. In the second year it is called Kaman and in the third year as Guda. They grow pulses like black gram, horse gram, beans, pumpkins etc., in Biringa, ragi and small millets in Kaman and paddy, niger, and small millets in Guda. They grow paddy in Bila or Jami which is owned individually, on a permanent basis. These irrigated lands are considered as the best land, which are very costly. The kitchen garden is situated very close to house known as Badi where they grow vegetables, maize and mustard. This land is very fertile because cow dung is collected from the cattle sheds and is spread on the land.

**The unmarried boys and girls may cultivate a land on cooperative basis to raise a common fund for youth organization. Similarly, the villagers also cultivate some land to increase the common stock of grains for its use in community level functions. A village having very less land for shifting cultivation may borrow some land from the neighboring village on a temporary basis for which prior permission is taken by offering presentation in form of liquor and feast.** However, some of the Paudi Bhuyans are practicing exclusively shifting cultivation for survival. Some of them are also engaged as labourers and wage earners. They work irrespective of their sex and social status. Activities like ploughing, sowing, thatching, climbing trees, hunting etc are performed by male folks and these are strictly prohibited for women. The females are very hard working and perform all household works mainly cooking, house maintenance and child care. There are certain works like cutting bushes, manuring, weeding, reaping, weaving mat, house plastering, sweeping, etc which are performed by the women. However, men and women work together on several occasions for the family.

The Paudi Bhuyan do the work themselves and take help of labourers from their own community according to their requirement. The Paudi Bhuyan may hire labourer on daily wages basis, annual basis, by lending cattle for ploughing by mutual arrangement, using community labour force of the village, dormitory youths of the village, unmarried girls of the village, close relation, etc. the rate of payment also varies for different types of labour. Ither for own self or for others they work with all sincerity and pleasure. Their joyful orientation, temperament and attitude towards work deserve high admiration. During hard work they also enjoy songs to break monotony of their work.

In order to safeguard their crops from natural calamity and wild animals, they appease supernatural beings by offering prescribed rituals. Other than shifting cultivation and plains agriculture they also depend on food-gathering, hunting and fishing to supplement their food. They collect mushrooms, tubers, roots, shoots green leaves, fruits, berries and nuts, seeds from the local forest either for consumption or sale. Almost in all the seasons Paudi Bhuyan people collect variety of minor forest produces like lac, sal, resin, char many kinds of wild rope, firewood, leaves for making cups and plates and several others which they sell in the market. By and large forest plays pivotal role in the socio economic life of the Paudi Bhuyan.

The livestock of the Paudi Bhunya people comprises of cow, bullocks, buffaloes, goats, sheep, poultry etc. The animals particularly goats and chickens are domesticated not only for consumption but also to be sacrifice at the deities. The cows and buffaloes are quite beneficial for agricultural purposes. Chickens and goats are always kept with special care to save them from wild animals. They engage persons to tend cattle or the same work may be performed on rotation basis among themselves. They have attached rituals for safety and security of their cattle wealth.

They hunt animals and birds in the forest and it is considered as a sport and accepted a means of getting non-vegetarian food items. During 'Akhriparudhi' so called annual hunting festival, failure in hunting is believed to have very bad impact on the current annual agricultural harvest. They also observe a number of taboos, dietary and sexual restriction before proceeding for ritual hunting. Before proceeding for such hunting, Naik, the religious specialist of the village offer a series of rituals to satisfy Dharm Devata "Sun God", "Basuki" earth goddess, "Gaisiri", village deity and "Boram" guarding deity. They also offer sacrifices of chicken in expectation of successful hunting. In a successful hunting the person responsible for killing the animal is ceremonially welcomed by women of the village. The hunter is praised and rewarded with a new cloth. The ceremonial hunting is observed for three consecutive days as a religious occasion. The women cannot take part in hunting but, play quite vital role at the time of return especially after successful hunting. Like hunting, Paudi Bhuyan male and females go for fishing in hill streams, rivers, and rivulets. They catch fish by hand, using fishing rod and fish traps. They also catch small fish by using the cloth by filtration process. They set fish traps in paddy fields during rainy season. Fish may be eaten by roasting or frying.

### **Social organisation**

The Paudi Bhuyan people are related to each other in a specified social network based on consanguinity and affinity. They behave each other in a prescribed pattern giving due respect to their age old practice of social norms and values. The family is considered as the smallest social unit. It is patrilineal, patrilocal and patriarchal. Members in the community are related with each other by birth or by marriage. Marriage is strictly prohibited among the agnatic kins. The spouses are always selected beyond the agnatic groups. The Khilli is the maximal lineage or extended group. After marriage a women becomes a member of that family. Even an adopted son-in-law becomes a member of the family of his father-in-law. **The properties are always inherited by the sons and the eldest one gets a little more. Married daughters cannot demand any immovable property. The property of a person having no male issue is enjoyed by his male agnates a daughter continues to live with her parents till she marries.** Her relation continues with her parental family even after she goes to her husband's house. Father is the head of the family and after his death eldest son controls the family

members. The head of the family exercises power over all the members. Widow mother is taken care of by her sons. Her suggestions are taken into consideration.

One can find nuclear family, joint family, extended family among the Paudi Bhuyan but now-a-days nuclear families are very common. It depends on the members of the family either to accept to live jointly or prefer to have their respective independent establishments. In respect of hunting rituals, shifting cultivation, annual revenue collection, village subscription, village rituals family has to play pivotal role. Families are also having some religious functions. It is the moral obligation of the family members to propitiate their ancestral spirits. After family, lineage is found to be very important for various social activities. The maximal lineage is group called "Khilli" is divided into a number of minimal lineages. A cluster of related linkages constitute a major lineage called "Khilli", Lineage groups are to observe pollution when a lineage member is dead, In case of successful hunting on festive and ceremonial occasions the role of "Khilli" is the most vital. Among the Paudi Bhunya Kutumba Khilli, and there are Bandhu Khilli. Men are strictly prohibited to marry in Kutumba Khilli as it is only permitted in Bandhu Khili.

Each Paudi Bhuyan village is a social entity; the people are interrelated and share each other's sorrows and happiness. In respect of youth dormitory, Biringa cultivation, death of a person, hiring of community labour, etc. village plays a vital role. It has a definite location and areas having prescribed group activities.

Each Paudi Bhuyan village is an independent social and economic unit. It has its own political council and prescribed rules for management. **A number of adjoining villages form an inter village social and administrative unit called Pirha.** Inter village relationship like marriage, hiring of community labour for agricultural purposes, hiring of a Biringa, dance among boys and girls, exchange of some bottle of liquors are observed between members of the villages of Pirha. In few functions, elders from different villages get together and hear from each other on different matters of their respective villages. Boys and girls of two different villages and Khillis joke and exchange gifts among themselves out of love and affection. **Pirha organization is the larger form of organization.** A number of Paudi Bhuyan villages is grouped for socio-political purposes. **People from all the villages of a Pirha assemble in a particular occasion to decide matters relating to their community, like re-admission into their society, distribution of property of a hire less, incorporation to of a non-Paudi Bhuyan to Paudi Bhuyan community etc.** The Pirha Dehuri performs rituals observed at Pirha level in order to maintain social solidarity.

## Religion

The Paudi Bhuyan believe that the world is under the absolute control of some deities and spirits. According to their respective power and function they are worshipped and appeased. They consider Dharam Devata Sun God as Supreme Being and Basukimata (Earth Goddess) as supreme deity. They are considered as husband and wife and look after the Paudi Bhuyan people in all respect. Apart from these two very important deities, Boram (Village deity), Birda (a male deity), Pats (Deities of hills), Gaisiri (enshrined near Darbar) and Thakurani (Important village female deities) are very important. All the above stated deities are benevolent in nature and appeased in their respective prescribed manner on different occasions. The Paudi Bhuyan also satisfies different malevolent deities and spirits at the time of need. Apart from their indigenous deities, spirits, ancestral spirits, ghosts etc

they also worship Lord Shiva, Laxmi, Durga and local gods and goddesses of their respective regions. Bishri Puja is conducted with all sincerity and devotion and believed to be protector and fulfills desires of the people. Of course this is Hinduised female deity but occupied special place in Paudi Bhuyan pantheon. Dehuri is the sacerdotal head who performs all community level religious rituals and satisfy the village level deities, spirits, gods and goddesses. Dehuri is offered a basketful of paddy and other ritualistic objects by the villagers out of the rice reserve of which he cooks & offers to different deities and spirits. If the villagers are not satisfied with the functioning of a Dehuri they can change him and select a suitable one but, usually such situation hardly arises, rather eldest son of Dehuri inherits his father's post and renders prescribed services. Dehuri being sacerdotal head gets the head of a sacrificial animal. He enjoys some special powers and privileges. **Dehuri is allotted with a specific patch of land**, gets special share of meat in hunting ceremony, villagers work for him free of cost, etc. A number of ceremonies connected with birth, marriage and death are performed by the house head including his wife.

The Shaman, locally known as Raulia plays some important role particularly in curing patients and appeasing malevolent deities. He is also a good psychologist, an astrologer and a medicineman. A Bejuni (sorcerer) is famous for his black magic. People are afraid of sorcerers and never dare going against him in any case. By and large, Dehuri, Raulia and Bejuni have their respective roles to play in the field of religious activities and controlling benevolent and malevolent spirits. They help in retaining social health and happiness and well being of the community. However, the Paudi Bhunya people are very much afraid of Bejuni and his black magic.

### **Rituals and festivals**

The Paudi Bhunya celebrates a number of feasts and festivals throughout the year. Each festival is associated with; specific deities, gods and goddesses, ritualistic observance, special food items agricultural cycle, activities relating to forest, shifting cultivation, hunting, fishing, food gathering, life cycle rituals, etc. It provides opportunity for interaction and get together between kin members and relaxation from monotony and boredom of daily routine works. They enjoy, merry make and revive their zeal and interest for successful endeavour. They start their new year after Maghpadi. They celebrate Am Nua in the month of Jan-Feb to give formal approval for taking raw mango after which manuring of agricultural land is undertaken.

Kath Jatra is celebrated in the month of Jan-Feb in which delicious cakes and non vegetarian food items are relished and onwards fried Mahua flower is allowed to be eaten by Paudi Bhuyan People. Gilor Jatra is observed for consumption of the Gilor flower by Paudi Bhunya in the month of March. Akhani Paridhi is celebrated for successful hunting in the month of March-April. Accordingly Boram Devata worship is conducted in the month of March -April to appease the village deity and afterwards Paudi Bhunya get divine approval for setting fire on dried bushes left in fallow land meant for Biringa cultivation. In the month of May, Tirtia is celebrated for sowing sanctified seeds in the field. They observe a number of taboos in this festival. Ashad is celebrated to ensure good rainfall. After this transplantation of paddy seedlings, sowing of black gram, horse grams etc. are undertaken. In order to allow the people to observe Gahma on a regional basis Pirha Jatal Puja is conducted by the people of a number of villages. Gahma festival is meant for worshipping the cows. It is celebrated in the month of July-Aug with pomp and new festival food items are relished on this occasion. During Sept-Oct eating of new paddy festival i.e. Nua Khia is celebrated by the Paudi Bhuyan in their respective

villages on different days. After harvest of paddy they celebrate Karma festival with sincerity and devotion by narrating legend of Karama Raja and worshipping branches of Karama plant (*Nauclea parvifolia*). The Paudi Bhuyan celebrate this festival for days together by inviting near and dear ones and arranging drinks, non vegetarian food items and other delicious food.

They have also adopted some festivals of other tribal communities and neighboring Hindu caste people. They have started worshipping Bishri Ossa, lord Shiva, Durga, Ganesh and many other Hindu deities.

### **Political organisation**

The Paudi Bhuyan are having well organized traditional council. Naik is the secular head, however, Dehuri also plays vital role in the traditional council. Some well to do and local persons of the community also take part in the discussion. Of course everybody is empowered to put forth his views but a few Paudi Bhuyan elites only take active part. Now-a-days traditional leaders and elected emerging leaders together form the council. The decisions are based on consensus.

The secular head Naik or Gauntia or Pradhan as they are known differently in various regions is the ruling chief for administrative purpose. **During king's administration Naik used to collect revenue, decide quarrels and conflicts**, attend the government officials and take care of them during their visit to the area. The post is hereditary and eldest son succeeds his father. He plays a vital role in deciding marriage negotiation, **allotment of Biringa, during traditional hunting ceremony in matters relating to various socio-economic disputes** and many others. **Naik enjoys special status in the community and people pay him a lot of respect. As the kingpin of administrative and social matters he exercises a lot of power. He conducts his court either in the evening or in the morning. The youth dormitory functions as court where all people assemble. He takes initiative and listens from the accused and declares final verdict.**

The cases that come to traditional council are quarrel between two individuals, partition of property, adultery, extra marital relationship cases, socially restricted sexual activities and disputes relating to property. Three or more villages join together under a wide traditional organisation, called Pirha or Bar where inter village disputes are resolved. Pirha has its functionaries to perform certain prescribed works. In this connection, Bhal Bhai, Pirha Bhandari, Dhoba or Behera, Pirha Naik or Jati Behera, Dal Behera, Ghadai, Pirha Brahman are having some role to play. Everybody is paid according to the function they have to perform. In certain important matters the Naik and Dehuri call for a meeting to undertake a preliminary trial. The sexual relation with an agnate or person of same khilli is considered very serious and the persons involved are excommunicated.

The offender pays a fine in cash or kind which is consumed by the participants in Pirha council. The out-caste people are readmitted to the community in the Pirha council where the person concerned begs apology and feeds the people in a group. In this process the offender gets free from the fault and restores his normal position in the society. In Pirha council a number of problems which are not solved in the traditional village council are sorted out. Incest is considered as the most serious and culprits are ostracized from the area and villagers treat them as dead and accordingly perform funeral rites. The persons released from jail have to face the Pirha council for their readmission to the Paudi-Bhuyan community.

Among the Bhuiyan tribes conformity to customs and norms and social integration continue to be achieved through their traditional organisations. The tributary institutions of social control, such as family, kinship and public opinion continues to fulfill central social control functions. The relevance of the Bhuiyan political organization in the context of economic development and social change continues to be undiminished. Modern elites in tribal societies elicit scant respect and have very little followings. And as the pattern of traditional leaders continues to wield influence over their fellow tribesmen, it is worthwhile to take them into confidence in the context of economic development and social change.

In every Bhuiyan village there is a Panchayat which meets at the Darbar whenever required. The village headman, 'Pradhan' presides over the Panchayat. A group of villages form a confederacy called Pirha. The Panchayat at this level is called Pirha Panchayat and the secular headman who presides over it is called 'Sardar'<sup>23</sup>. As a very conscious and educated tribe the Bhuiyan avoid the practice of violence at the time of election, that's why they adopt the process of election through nomination rather than election.

The primary function of the Village Panchayat is to decide partition of property among two brothers, distribute land for shifting cultivation, organize religious ceremonies and maintain peace and tranquility in the village. In the earlier dispensation Pradhan and Sardar were very powerful and men of authority. They used to collect land revenue from the ryots and maintain law and order in their respective areas of operation<sup>24</sup>. After independence and abolition of intermediary system and merger of feudatory states with Orissa these traditional political organisations have been weakened. The introduction of statutory Panchayat has further weakened the old political order and Pirha organization. In every Bhuyan village there is a council. All elders are members. It is now jointly headed by the secular headman called Pradhan or Naik and the ward member representing the village in the statutory Gram Panchayat. This council selects and distributes the swidden among the household. It has also the overall responsibility of maintaining peace and harmony in the village and punishes the offenders found guilty of violating customs and traditions<sup>25</sup>. The village priest called Dehuri, being ritual head, is always consulted while important decisions are taken in the village council. He, being the guardian of the traditional values associated with religion, is supposed to maintain a link with the supernatural powers<sup>26</sup>. His advice and direction is always taken into account. He is the chief functionary to fix the day of the celebration of communal festivals in the village wherein he officiates with all austerity.

He symbolically takes the lead in tree cutting and bush clearing, firing, sowing, ploughing and harvesting. He initiates the eating of new crops after offering them to the deities and ancestors. He and the secular headman of the village are given first preference in the selection of fresh clearings for themselves.

In the changing scenario traditional village council and Pirha council are found to be relaxed and customary rules and regulation are not strictly adhered as compared to mainframe constitutional law.

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<sup>23</sup> Mohanty.B-B., 'Bhuyan', Tribes of Orissa, Tribal and Harijan Research-cum-Training Institute, Bhubaneswar, 1990, p.50

<sup>24</sup> Ibid, p. 51.

<sup>25</sup> Chaudhury, B., "Habitat, Economy and Society: Data from a Bhuyan Village in Orissa", ed. George Prefer Deepak, Ku. Behera, Contemporary Society: Tribal Studies, Vol. 2, Concept Publishing Company, NewDelhi, 1997, pp. 290-291.

<sup>26</sup> Ibid, pp. 295-296.

Socio-cultural rules and village traditional councils are losing its importance and younger generations are changing their mind away from the strict socio-cultural customs and traditions.

In spite of all these, in normal situation the Paudi-Bhuyan are peace loving people and don't like to interfere in other's affairs. They hardly express their displeasure against someone rather they prefer to lead a smooth life without developing enemies. Of course, they are not completely free from anger, jealousy, revengefulness rather they avoid occasions which lead to quarrel and conflicts. The political organization feels morally bound to provide safety and security to its community men.

The Paudi Bhuyan had their very well organized political organisation in the past. With the introduction of the Panchayati Raj their traditional political organization has become weak but somehow it continues and serves the politico-jural interest of the people.

### **Life cycle rituals**

Life cycle rituals of Paudi-Bhuyan comprise birth, childhood socialization, adolescence, adulthood, old age, death, death rituals. A woman is expected to give birth to a child and her bareness' brings her position low in the society. If she fails to give birth to a child her husband is socially permitted to remarry. A male child is preferred over a girl child in their community because girls leave their parents after getting married.

A pregnant woman is strictly prohibited to consume meat of any sacrificial animal. She is not allowed to attend any rituals other than the rituals relating to her pregnancy and child birth. In expectation of foetus injury she has to face a lot of troubles. After birth of a child she is confined to reside inside the house. Traditional midwife takes care of the baby and woman. The naval cord is usually cut by the mother or grandmother by using an arrow in case of a male child and with a bamboo split in case of a girl. The mid-wife is paid in cash or kind for her services. The birth pollution continues from a week up to three months. However, rituals are conducted in phased manner to make the family members free from pollution. Name giving ceremony may be observed on seventh day where village old women and other members may join to select a suitable name for the child. They adopt a procedure in which sun dried rice and sesame seeds are put on the surface of bowlful of water to confirm the diviners order for final selection of the name of the infant. Mostly, they prefer the name of the paternal grandfather in case of male child and name of the paternal grandmother if the child is female. After the name is announced publicly the family members cook special food items and enjoy with close relatives. The woman henceforth is allowed to be free from pollution and seclusion. She observes dietary restrictions for a few months and she is offered prescribed diets, like rice, salt and onion. Vegetarian and non vegetarian food items are strictly prohibited. Early child-hood socialization process is taken care of by the mother and other family members. In case of successive death of the children, the parents may handover the child to one of their close relations in a formal meeting though practically the child remains with the original parents. Taking into account different situations the parents may offer sacrifice of animals and birds before Thakurani, Gaisiri, Boram and Pat deities for safety and security of the child. Godo Dhuari ceremony is observed after the child walks and first hair cutting ceremony is celebrated in which maternal uncle cuts the natal hair. Late childhood socialization process is very important in case of Paudi Bhuyan boys and girls as they acquire knowledge for their survival in the community. They join the youth dormitory at the age of 12 to 14 years and remain adhered to friends with their respective sex groups.



The Paudi Bhuyan marries within the tribe to cognates but the marriage is strictly prohibited among agnate, which is considered incestuous. They have very clear cut idea about Kutumb groups (agnates) and Bandhu groups for conducting marriages. Marriage is monogamous but one can remarry if the first wife does not give birth to a child. Marriage by negotiation (Mangi Bibha) is mostly preferred but it is very expensive and time taking. Marriage by elopement (Dhari pala) and marriage by capture (Ghicha Bibha) are common as these are less expensive and easier to acquire a life partner. There are love marriages; by putting flower on the bun of a girl (Phul khusi) or by throwing mango to a girl (Am lesera) or by putting mud on the body of a girl (Kada lesera). One can also marry a widow following social norms and values. The marriage ceremony is very expensive and payment of bride price is a must. Of course the payment time and rate may vary from one type of marriage to other and it may differ from person to person taking into account one's economic status. Well to do Paudi Bhunya celebrate marriage function with much pomp and show and seriously follow different stages of marriage ceremony and associated rituals. The dormitory friends are offered presentation by the couple and they take formal farewell from their respective dormitory friends. Though it is difficult but divorce in both the cases is possible but, the Paudi Bhuyan couple is found very cooperative and they manage their life with their children happily. At their old age sons are expected to take an adequate care of the old parents. The old persons lead happy life with their respective sons, daughter-in-laws and grand children. Death to them is due to unhappiness of the gods, goddesses, deities, spirits and black magic. The agnates and cognates attend and carry the corpse to the burial ground. The first handful of earth is put by the eldest son, which is followed by other kiths and kins. When a pregnant woman dies rituals are somehow different because pollution period lasts for only two to three days. They call back the soul of the dead at home and enshrine their ancestral deity inside the main house.

### **Types of Marriage**

According to the Paudi Bhuyans, there are mainly four kinds of marriage: arranged marriage, marriage by elopement, love marriage by arrangement and marriage by capture.

**Arranged marriage:** This is the most preferred customary form of marriage in Paudi Bhuyan society. In this case the parents of the boy go on search for a bride for their boy. When a prospective groom's side visit and if both the sides agreed, then the marriage can take place. In this type of marriage, the girl's side will be given a proposal from the boy's side first. Then the girl's side visits the boy's residence. A good feast is given to them. Handia (traditional liquor) is an important part of this feast. The arrangement and distribution of Handia on such occasion is a sense of respect and an act of pursuance. In spite of all sorts of guest services the girl's side is free to deny the marriage proposal. It is not always definitive that the girl's side will agree and marriage will be fixed.

**Love marriage:** While a boy attains the age of marriage, he visits the other villages as a guest to his relatives. He stays there for few days. During this period of stay he goes on searching a soul mate. If he finds a girl of his choice in that village he starts interacting with her secretly. He attracts the girl towards him by clinching her anchal (leading edge of the clothes or saree) or by throwing flower at her. All these activities are done secretly. If the girl agrees it leads to further intimacy and love making. After three four days of such interaction, the girl elopes with the boy. But the boy with his prospective wife does not go to his own house, rather to a relative's house. The relative reports it to the parents of the boy but not the girl's. On the other hand, the parents of the girl go on searching for their girl to different villages to know the where about of their daughter. At last, when they find their

daughter, they may accept the boy as their son-in-law without any hesitation. But it happens with a symbolic exchange of words that “why did you flee my daughter”, “you should have informed us” and so forth. At this time, the boy’s side remains receptive and tries to convince them. At last the parents of the girl ask her if the boy has brought her forcefully or she has come on her will. As she says that she has come on her will, the parents ask her that if she is happy with the boy or not. If she says yes then they leave her to stay with the boy. A formal marriage ceremony is conducted soon. This ceremony gives approval to the couple as husband and wife.

**Love marriage by arrangement:** It’s a Bhuyan way of selecting mate. In this case the boy and girl know each other and are in love. But it’s the girl’s wish to go for a singing practice. This singing starts towards early late night while people are preparing to go to bed. As per the plan the guest boy with one of his friends or relatives of his own age from the village sits on the verandah of the relative. Similarly the girl with one or two of her friends sits at her own verandah or at a distance from where they can listen to the boys. Then the singing starts. It continues till late night as long as most of the villagers get asleep or the girls’ group stops singing. Then the guest boy goes to the girl, he loves. He says some romantic words. This leads to some intimacy, most of the time ending with lovemaking. As it was explained by an elderly villager, this love song has many purposes to fulfill. Marriage through singing is considered as a matter of glory for the boy. Because during singing the boy mostly praises the girl, explains her beauty and other good qualities through song. This explains his knowledge and understanding the girl. The accompanying boy from the same village though helps him in this regard. The song is composed on the spot and is sung. This act of knowledge of the boy about the girl convinces and impresses the girl about the level of interest of the boy in her. From another point of view, many a times though the girl is in love with the boy, she does not want to marry by ignoring her parents. So, this is a way in which the girl and the boy express their will only before the parents of the girl but to others also. Again this is another way out for the girl to inform her parents and relatives about her love wishes. So, though the girl’s parents know that their girl is ‘singing’ and the next possible happenings, they allow it. In Bhuyan society, the girls have liberty to choose their partners.

**Marriage by capture:** The man captures and takes the woman of his choice by force to his home. The venues of capture are generally the village market and fairs, public festival, the way to forest, etc. After bringing the woman home, the man tries to convince her with his social status, property, house, etc. Knowing the incidence of capture of their girl, her relatives reach the boy’s house. Previously there happens serious fighting between the girl’s side and the boy’s side. The winning party takes the girl. Generally the boy’s side wins as they remain prepared by gathering relatives and supporters with the apprehension of a serious fight. It is important to note that such happenings rarely lead to long term inter-village tension. It is considered just as a part of the practice. A mock heated exchange of words happens. The girl’s side asks their daughter if she wants to stay with the boy or wants to leave. During such situations, the boy’s side remains submissive. General perception is that it is the responsibility of the boy to attract the girl towards him and to make her fall in love with him. If it does not happen and the girl is not happy with the boy, she is free to leave with her parents. Then a normal arranged marriage is done — the girl with some other boy. In no case the girl can be kept forcefully. But in such situations, where the girl shows hesitation to stay with the capturing boy, the boy’s side along with few of village council members goes to the girl’s village. They meet the parents of the girl as well as the elderly persons from village council. Further, a grand handia (cultural liquor) party is arranged for the

girl's family and her village people by the boy's side. Gifts are also presented to the girl as well as her family. If all the people are convinced, the girl is requested to move to the boy's house. But it is noteworthy that in spite of all these arrangements, if the girl disagrees to leave for the boy's house then her wish is respected. But such situations rarely arise.

### **Social hierarchies and marriage rules**

Paudi Bhuyans identify themselves as Hindu. The prohibition and exhibition of marriage in Paudi Bhuyan society is regulated by specific rules. It is controlled by Jaati system which is similar to Hindu caste system in India. They prohibit marital relationship with other tribes beyond Bhuyan and in particular with Juangs, Mundas, Kolhs like tribes. Paudi Bhuyans have flexibility in establishing the marital relation with Bathudis and Gands which are the other two tribes cohabiting with Paudis in the same geographic territory.

A strict restriction is obeyed with respect to any sort of social interaction or transaction with Pano, Dom, Hadi (three low caste groups in Hindu caste system below the line of purity) and Kumhars (Potter). Again it is interesting to note that they consider Munda, Majhi and Nuthuri (those who eat cow meat) tribes as the three sub-group of Kolh, another tribe. These three are strictly prohibited with respect to socio-cultural relationship. It is a taboo to eat cooked food from Mundas and Nuthuris as they eat beef. Majhis do not eat beef, so a relaxation is given to Majhis and Kumhars (potters) in the form of sharing only Handia (a cultural liquor), a cooked beverage. But marriage is restricted with Majhis and Potters. Similarly they do not share any type of cooked food with Juangs who are having a good population distribution in the geographies where Paudi Bhuyans are concentrated, especially in Keonjhar district.

### **Development and change**

For a pretty long time in the remote past the Paudi Bhuyan remained in isolation. Under the impact of modernization, introduction of planned development efforts and exposure to other religions they got influenced to change and adopt new way of life. The socio-economic development activities have brought immense change in their cultural pattern and lifestyle. The main factors responsible for their economic transformation are development programs launched by the State government, Government of India, NGOs, Foreign funding organization, etc. During the last six decades Government has initiated various welfare measures to bring sustainable socio economic development. They have been immensely benefited by their respective I.T.DAs, D.R.DAs and particularly by their respective Micro Projects for their socio economic up-liftment. In view of their all round development three Micro Projects, one located at Khuntgaon in Sundergarh district, second located at Jamardihi area in Pallahara block of Angul district and third one located at Rugudakudar area of Deogardh district are functioning. These Micro Projects are looking after holistic development of the Paudi Bhuyan of their respective jurisdiction. They have now gradually adopted, developed agricultural practices, using high yielding seeds, chemical fertilizers and pesticides and some of them are adopted fruit cultivation and producing vegetable to earn good money. The state Government is attempting to bring in significant development intervention to raise standard of living and quality of life. Multifarious development programmes relating to health and sanitation, education, environment conservation, infrastructural development, individual benefit schemes etc., have transformed their outlook. Introduction of modern agriculture, multiple cropping, use of high yielding variety of seeds, provision of irrigation facility, input

assistance, market assurance, etc. have brought quite visible changes in their lifestyle. Because of meagre harvest in slash and burn type of rotation cultivation, the Paudi Bhuyan have adopted modern techniques and use of high breed seeds as well as pesticides and fertilizer.

Paudi Bhuyan youths are found engaged in small business, selling of fire wood in the nearby town, working as daily wage earner in the house of non tribal etc. The emerging new leaders behave and act like pseudo-politicians in the plains. The genius of the Paudi Bhuyan and their indigenous wisdom are considered out dated and their dependence syndrome is developing very fast. Now a day young women work in road construction as daily labourer under the contractors and some of them have adopted small business and trading. The development organizations and welfare institutions have contributed to the changing life of the Paudi Bhuyan. The 'Darbar,' which was once upon a time, the main tribal socio-cultural institution has lost its identity. Hindu religion influence has percolated dipper and their chief deities are losing their importance. Most powerful kinship organization, inter and intra village relationship, help and cooperation at family level and unity among the Paudi Bhuyan are changing fast all the three Paudi Bhuyan Development Agency as well as their respective I.T.D.A. and DRDA have brought a lot of positive impact on development of education, agriculture, irrigation, soil conservation, housing, communication, health and sanitation etc.

**Table No. 5**

**Demographic profile of Paudi Bhuyan under PBDA Khuntugaon, Sundargarh**

Sl. No	Name of Tahsil	Name of GP	Name of village/ Hamlet	No. of families	Total population (Baseline survey – 2015)		
					Male	Female	Total
1	Lahunipara	Fuljhar	Fuljhar	122	259	238	497
2		Fuljhar	Badjala	75	150	148	298
3		Fuljhar	Sasa	108	234	220	454
4		Fuljhar	Pattamund	89	188	184	372
5		Fuljhar	Uskela	119	219	225	444
6		Fuljhar	Nagaria	34	70	69	139
7		Fuljhar	Talginia	39	67	86	153
8		Fuljhar	Uppergina	54	91	109	200
9		Fuljhar	Hatisul	22	53	44	97
10		Talbahali	Budhabhuin	60	111	112	223
11		Talbahali	Bad Nuagaon	43	87	89	176
12		Talbahali	San Nuagaon	45	85	87	172
13		Talbahali	Ladapani	13	28	26	54
14		Talbahali	Kilinda	15	29	25	54
15		Talbahali	Kardakudar	13	24	26	50
16		Haldikudar	Sanjala	69	127	152	279
17		Haldikudar	Mukulapani	13	28	20	48
18		Haldikudar	Ranja	42	69	79	148
19		Haldikudar	Angul	6	14	16	30
20		Bhutuda	Sareikela	49	85	94	179
21		Bhutuda	Tilkuda	35	64	69	133
22		Kuliposh	Kuliposh Colony	54	104	102	206
	1 Tahsil	5 GPs	22 Habitations	1119	2186	2220	4406

Source: SCSTRTI: Baseline survey report of 2015

**Table No.6****Demographic profile of Paudi Bhuyan under PBDA Jamardihi, Angul**

Sl. No	Name of Tahsil	Name of GP	Name of village/ Hamlet	No. of families	Total population (Baseline survey – 2015)		
					Male	Female	Total
1	Pallahara	Pechamundi	Duipani	131	280	287	567
2		Sigarh	Timi	85	156	151	307
3		Bandhabhuin	Jamardih	144	254	268	522
4		Bandhabhuin	Dudipani	118	222	211	433
5		Bandhabhuin	Bhimkand	62	115	103	218
6		Bandhabhuin	Bandhabhuin	51	86	83	169
7		Bandhabhuin	Ganeswarpur	9	17	18	35
8		Bandhabhuin	Pattamund	45	70	74	144
9		Bandhabhuin	Siaria	37	70	66	136
10		Bandhabhuin	Itee	41	81	81	162
11		Bandhabhuin	Kurtibasapur	6	9	9	18
12		Nagira	Nagira	143	303	298	601
13		Nagira	Balibahal	47	100	101	201
14		Nagira	Sibida	86	168	177	345
15		Nagira	Kadambinipur	39	95	95	190
16		Nagira	Salei	81	183	182	365
17		Nagira	Sandhar	63	146	128	274
18		Nagira	Kaira	31	59	68	127
19		Nagira	Jallha	14	30	26	56
20		Nagira	Baradiha	52	107	108	215
21		Nagira	Barunadihi	32	75	64	139
22		Nagira	Rada	63	134	120	254
23		Nagira	Tanugula	92	196	194	390
24		Nagira	Khadaka	81	175	181	356
25		Nagira	Rugudihi	40	81	74	155
26		Nagira	Jamudiha	32	62	65	127
	1 Tahsil	4 GPs	26 Habitations	1625	3274	3232	6506

Source: SCSTRTI: Baseline survey report of 2015

**Table No.7****Demographic profile of Paudi Bhuyan under PBDA Rugudakudar, Deogarh**

Sl. No	Name of Tahsil	Name of GP	Name of village/ Hamlet	No. of families	Total population (Baseline survey – 2015)		
					Male	Female	Total
1	Barkote	Saruali	Saruali	1	2	1	3
2		Saruali	Bijadihi	38	45	18	63
3		Saruali	Mahulata	35	45	27	72
4		Saruali	Tainsira	24	21	24	45
5		Saruali	Marha	31	20	18	38
6		Saruali	Autal	95	83	38	121
7		Saruali	Kadalidihi	41	44	39	83
8		Saruali	Balidihi	44	40	38	78
9		Saruali	Gadia	13	5	8	13
10		Saruali	Khuntadihi	4	2	5	7
11		Saruali	Madalia	6	6	5	11
12		Gurusang	Gurusang	91	120	93	213
13		Gurusang	Purunapani	49	32	25	57
14		Gurusang	Baidharnagar	30	48	27	75

15		Gurusang	Depatala	17	8	12	20
16		Bamparada	Siarihuli	18	15	14	29
17		Bamparada	Golabandhakotei	12	7	12	19
18		Bamparada	Netrabahal	7	4	8	12
19		Bamparada	Kaladu	25	15	20	25
20		Bamparada	Mahuldiha	25	22	40	25
21		Kalla	Debichuakotei	37	33	76	37
22		Kalla	Sarankote	71	60	125	71
23		Kalla	Rugudakudar	129	125	233	129
24		Kaliapal	Kaliapal	15	10	25	15
25		Kaliapal	Jalisuan	42	45	86	42
26		Kaliapal	Budhabhuin	14	12	22	14
27		Kaliapal	Pacheripani	88	109	226	88
28		Danra	Jhumpura	27	17	35	27
29		Balanda	Niktimal	13	6	11	13
30		Balanda	Gopapur	6	5	9	6
31		Balanda	Bahadaposi	3	4	6	3
32		Singhsal	Singhsal	9	5	11	9
	1 Tahsil	8 GP	32 Habitations	1060	1960	1930	3890

Source: SCSTRTI: Baseline survey report of 2015

**Table No. 8**

**Private land holding by villages under PBDA Rugudakudar**

Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.	Sl. N	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.
1	Saruali	2.20	NA	17	Golabandhakotei	0.48	
2	Bijadihi	31.20	NA	18	Netrabahal	4.20	
3	Mahulata	34.29	NA	19	Kaladu	16.97	
4	Tainsira	34.32	NA	20	Mahuldiha	NA	
5	Marha	38.12	NA	21	Devichuakotei	27.92	
6	Autal	87.61	NA	22	Sarankote	40.65	
7	Kadalidihi	NA	NA	23	Rugudakudar	63.80	
8	Balidihi	NA	NA	24	Kaliapal	8.80	
9	Gadia	NA	NA	25	Jalisuan	75.12	
10	Khuntadiha	2.98	NA	26	Budhabhuin	17.34	
11	Madalia	44	NA	27	Pacheripani	23.43	
12	Gurusang	45.09	NA	28	Jhumpura	2.20	
13	Purunapani	20.15	NA	29	Niktimal	NA	
14	Baidharanagar	17.70	NA	30	Gopapur	NA	
15	Depatala	13.27	NA	31	Bahadaposi	NA	
16	Siarihuli	0.60	NA	32	Singhsal	NA	
Total Revenue Land – 649.46 Ac., Total FRA land – NA							

Source: SCSTRTI: Baseline survey report of 2015

**Table No. 9**

**Private land holding by villages under PBDA Khuntugaon**

Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.	Sl. N	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.
1	Fuljhar	189.26	10.14	12	San Nuagaon	32.15	3.98
2	Badjala	56.53	17.08	13	Ladapani	44.40	21.77
3	Sasa	55.30	42.65	14	Kilinda	60.50	0.00
4	Pattamund	100.45	27.44	15	Kardakudar	28.80	2.78

5	Uskela	73.86	50.02	16	Sanjala	110.80	53.94
6	Nagaria	54.20	0.00	17	Mukulapani	26.98	8.85
7	Talginia	97.17	15.7	18	Ranja	103.25	15.68
8	Uppergina	85.88	9.34	19	Angul	40.20	0.00
9	Hatisul	7.76	3.89	20	Sareikela	37.61	12.74
10	Budhabhuin	117.45	43.14	21	Tilkuda	35.82	28.77
11	Bad Nuagaon	28.39	7.84	22	Kuliposh Colony	125.00	0.00
Total Revenue Land – 1511.76 Ac., Total FRA land – 385.75							

Source: SCSTRTI: Baseline survey report of 2015

**Table No.10**

**Private land holding by villages under PBDA Jamardihi**

Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.	Sl. No	Name of Village / Hamlets	Revenue Land in Ac.	FRA Land in Ac.
1	Duipani	164.29	19.45	14	Sibida	176	84.94
2	Timi	68.53	17.36	15	Kadambinipur	106	113.35
3	Jamardihi	192.70	21.20	16	Salei	359	86.65
4	Dudipani	123.27	15.20	17	Sandhar	263	32.00
5	Bhimkand	90.97	7.61	18	Kaira	127	11.09
6	Bandhabhuin	62.99	Nil	19	Jallha	48	36.08
7	Ganeswarpur	2.79	0.80	20	Baradiha	95	62.95
8	Pattamund	37.60	3.80	21	Barunadihi	65	22.67
9	Siaria	27.40	7.45	22	Rada	94	80.16
10	Itee	41.00	11.60	23	Tanugula	173	79.84
11	Kurtibaspur	30.00	2.50	24	Khadaka	146	39.36
12	Nagira	107.00	4.00	25	Rugudihi	71	60.67
13	Balibahal	43.75	13.60	26	Jamudiha	45	25.06
Total Revenue Land – 1727.11 Ac., Total FRA land – 319.82 Ac							

Source: SCSTRTI: Baseline survey report of 2015

## Chapter – 3

# Customary Law: Meaning, Domain and Dimensions

### Anthropology of Law

Anthropology is an empirically-grounded discipline. Its material is observed in the real world, typically through long-term, focused participant observation. The anthropologist studies social forms as they exist in all their variety, including ideas as well as physical activities, and what may be regarded as archaic or marginal. Laws are intangible phenomena and the ideas expressed or symbolized by them are as important as the ways in which they regulate behaviour. The social forms we commonly think of as law; do not constitute a straightforward category, however.

Anthropologists can address the concept of law by examining comparatively the empirical phenomena to which we properly apply the term. Without seeking precise definitions, we can look for connections and commonalities amongst them, as well as differences, inconsistencies, and contradictions<sup>27</sup>. Social anthropologists study social forms, i.e. institutions, patterns of behaviour, and social relations, the ideas that underpin them, and the symbols that give them meaning. Identifying what is socially or culturally distinct is often easier when the material is unfamiliar and anthropologists have often sought out what seems different or remote for their studies. However, careful observation can lead to insights into aspects of our own societies.

Pareira in the section of customary law and anthropological jurisprudence describes<sup>28</sup>, Tribal people believe that all their customs are sanctioned by their ancestors. Customary laws, include customary worldviews, principles or values, rules and codes of conduct, and established economic practices. They are enforced by community institutions and can have sanctions attached. They are derived from natural resource use. They are locally recognized, orally held, adaptable, and evolving (Swiderska, 2009<sup>29</sup>). Customary laws, embedded in social, economic, cultural and spiritual domains, regulate and prescribe behavior and engage in conflict resolution mechanisms. Tribal people do not have 'governments'. Instead, disputes and punishments are decided upon by the elders who are knowledgeable. Some tribes have chieftains belonging to a 'higher' or settler clan. Property ownership, especially among shifting cultivators, is based on larger kinship groups. The economic patterns of tribes are based on larger kinship groups. Marriage in tribal societies tends to be monogamous and usually involves bride-wealth exchanges. Marriage bonds are the basis of descent group alliances, which occurred in the past within large clans among Nagas on account of warfare and headhunting.

**Customary laws are omnipresent. They may be divided into two broad categories.** The first includes the family and kinship laws governing rules of marriage, divorce, inheritance, etc. The second includes laws concerning different types and levels of tenure rights over lands, forests and other natural resources. It needs to be spelt out, however, that the issues of kinship, family and marriage are

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<sup>27</sup> Pirie, F. (2013). *The Anthropology of Law*.

<sup>28</sup> Pareira, M., Athparia, R.P., Changmi, S., Chetia, J.(Ed). 2017. *Gender Implications of Tribal Customary Law*, Rawat Publications, Jaipur

<sup>29</sup> *ibid*



critically interlocked with issues of land, water rights and common property resources, landscape, sacred domain of environment and indigenous knowledge. Kinship in tribal societies provides the organizing principles for group placement and social identity, inheritance and resource distribution. According to Leela Dube (2001)<sup>30</sup> entitlement to various kinds of resources including food, health and nutrition, and the obligations and responsibilities of members of the group are best understood by keeping in view the fact that it is the kinship systems which provides the language for all these and gives them legitimacy. Dube argued that not only in traditional legal systems and in customary law but also in the content and character of the new laws that have been framed ostensibly to favour women, one can discern the unmistakable stamp of kinship ideology and kinship organization.

The close association between anthropology and customary law led to the development of specialized discipline of anthropological jurisprudence. Henry Maine, through his celebrated work *Ancient Law* (1861) is regarded as founder of anthropological jurisprudence. Malinowski, in his work, *Crime and Custom in Savage Society* (1926), opened new possibilities for research. E.A. Hoebel's *The Law of Primitive Man* (1954) and Schapera's *Handbook of Tswana Law and Custom* (1938) are regarded as the basis of the 'jural school' of legal anthropology. During the 1950s and 1960s, legal anthropologists were largely concerned with law as an aspect of social control. Since 1954, a series of monographs on 'anthropological jurisprudence' has been published (Howell, 1954; Smith and Roberts, 1954; Hoebel, 1954; Gluckman, 1955; Pospisil, 1958; Gulliver, 1963). In anthropological narratives, it is widely held that there exists a body of rules, values and traditions, more or less clearly defined, which are historically accepted as core standards. Defining such a body of rules, values and traditions as 'law' has, however, caused divisions of opinion, especially between lawyers in the positivist tradition of jurisprudence and legal anthropologists. In the 1980s the postmodernist critique questioned traditional categories of legal anthropologists. Geertz challenged the categories of 'law' and 'fact', and raised serious concerns about the ability of anthropologists and legal thinkers to combine their approaches as part of an interdisciplinary project (Geertz, 1983: 169-170). Mertz (1994) thought that legal anthropologists should apply tools of linguistics in order to better appreciate the importance of language in the legal processes. It is broadly acknowledged that studying law 'anthropologically' means looking at 'law' as a product and an expression of a cultural system, a realm of sub-culture. Legal anthropologists see customary law based on conceptual categories of people using folk terms, to describe the processes. There has also been some perplexity as to the use of the term 'legal' and the difficulty of drawing a boundary between legal and non-legal norms and identifying a non-state law, as has emerged in some important legal anthropology writings (Merry, 1988; Falk Moore, 1973; Roberts, 1979).

Pecos (2005) holds that indigenous justice systems are based on a holistic philosophy. Law is a way of life, and justice is a part of the life process. In many contemporary tribal societies, dual justice systems exist. One is based on what we call indigenous and the other is constitutional. The indigenous system is guided by the unwritten customary laws, traditions, and practices that are learned primarily by example and through the oral descriptions of tribal elders. It is holistic. 'The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same center. The center of the circle represents the underlying issues that need to be resolved to attain peace and harmony for the individuals and the community. The continuum

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<sup>30</sup> *ibid*

represents the entire process, from disclosure of problems, to discussion and resolution, to making amends and restoring relationships. The methods used are based on concepts of restorative and reparative justice and the principles of healing and living in harmony with all beings and with nature<sup>31</sup>.

Restorative principles refer to the mending process for renewal of damaged personal and communal relationships. These are necessary for the offender and victim to save face and to restore personal and communal harmony. Reparative principles refer to the process of making things right for oneself and those affected by the offender's behavior. To repair relationships, it is essential for the offender to make amends through apology, asking forgiveness, making restitution, and engaging in acts that demonstrate a sincerity to make things right. Thus, offenders remain an integral part of the community because of their important role in defining the boundaries of appropriate and inappropriate behavior and the consequences associated with misconduct<sup>32</sup>.

Law, as life, is linked to the elaborate relationships in many tribal communities. In some tribes it is exemplified by tribal divisions that represent legal systems prescribing the individual and kin relationships of members and the responsibilities individual and group members have to one another and to the community. The paradigms of tribal indigenous justice system are<sup>33</sup>:

- Holistic;
- Communication is fluid;
- Native language is used;
- Oral customary law learned as a way of life by example;
- Law and justice are part of a whole;
- The spiritual realm is invoked in ceremonies and prayer;
- Builds trusting relationships to promote resolution and healing;
- Talk and discussion is essential; Reviews problem in its entirety, contributing factors are examined;
- Comprehensive problem solving
- No time limits on the process, long silences and patience are valued
- Inclusive of all affected individuals in the process and solving problem
- Representation by extended family members
- Focus on victim and communal rights
- Corrective, offenders are accountable and responsible for change
- Customary sanctions used to restore victim-offender relationship
- Obligation of accused to verbalize accountability
- Reparative obligation to victims and community, apology and forgiveness

The forums for handling disputes differ for each tribe, which may use varying combinations of family and community forums, traditional courts, quasi-modern courts, and modern tribal courts. The justice systems are maintained through different forum.

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<sup>31</sup> Melton, Ada Pecos (2005). Indigenous Justice Systems and Tribal Society. In Wanda D. McCaslin, ed., *Justice as Healing: Indigenous Ways. Writings on Community Peacemaking and Restorative Justice from the Native Law Centre*. St. Paul, MN: Living Justice Press. Pp. 108-120

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

Family forums, such as family gatherings and talking circles, are facilitated by family elders or community leaders. Matters usually involve family problems, marital conflicts, juvenile misconduct, violent or abusive behavior, parental misconduct, or property disputes. Customary laws, sanctions, and practices are used. Individuals are summoned to these gatherings following traditional protocols initiated by the chosen elder.

Community forums require more formal protocols than family forums, but draw on the families' willingness to discuss the issues, events, or accusations. These are mediated by tribal officials or representatives. In the community forum, the tribal representative acts as facilitator and participates in the resolution process along with the offender and victim and their families. As with the family forum, prayers are said at the beginning and at closure. An unresolved matter

Traditional courts incorporate some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to community forums. These courts exist in tribal communities that have retained an indigenous government structure. Defendants are notified in writing. Although rare, matters may be appealed to the tribal council.

Common terms or references to the law of indigenous societies include customary law, indigenous law, native law, and tribal or native law ways. All refer to the same concept. Customary law is generally derived from custom. Custom in this sense means a long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary.<sup>34</sup>

Tribal common law is based on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices. In many tribes, information, beliefs, and customs are handed down orally or by example from one generation to another. This segment is traditionally set aside for the spokespersons or tribal officials to speak of community values, mores, and the consequences of misbehavior or misconduct. Often these are conveyed in parables or creation narratives and beliefs. Advice is given about harboring vengeful feelings, and everyone is encouraged to renew relationships.

Indigenous methods of conflict resolution include traditional dispute resolution, peace making, talking circles, family or community gatherings, and traditional mediation, described only by the language of the tribal community. All these refer to the methods of resolving problems and to the methods of restorative and reparative justice. The structure of relationships in many tribal communities is paramount to a legal system exemplified by the clan system.<sup>35</sup>

### **Custom and Customary Law**

A Custom is any established mode of social behaviour within the community. Various dimensions of human behaviour which are prescribed by the community or society hint at the conceptual frame of custom. It is considered as one of the mechanisms of social control and an appropriate direction for humans to live in the community and to allow the society to perpetuate. Custom in Chamber's 20th Century Dictionary means, 'What one is wont to do: what is usually done by others: any of the distinctive practices and conventions of a people or locality, esp., those, of a primitive tribe'.

Custom has been defined and opined by various scholars, jurists and authors. "The word custom" as defined by Sapir, "is used to apply to the totality of behaviour patterns which are carried by tradition

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<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

and lodged in the group, as contrasted with mere random personal activities of the individual”<sup>36</sup>. Radin states that “customs are regarded as habitual ways of conduct among social groups”<sup>37</sup>. While Carter maintains that, custom is the “uniformity of conduct of all persons under like circumstances”<sup>38</sup>. According to Holland, “custom is a generally observed course of conduct”<sup>39</sup>.

In *Subramanian Chettiar v. Kumarappa Chettiar*<sup>40</sup> custom has been defined as, “A particular rule which has existed from the time immemorial and has obtained the force of law in a particular locality.” In *Hur Prasad v. Sheo Dayal*,<sup>41</sup> custom has been defined as ‘Rule which in a particular family or in a particular district or in a particular sect, class or tribe, has from long usage obtained the force of law.’ Citing *Hur Prasad v. Sheo Dayal*, Sir Hari Singh Gour states that, ‘Custom is an established practice at variance with the general law’<sup>42</sup>.

According to Sir John Salmond, “Custom is frequently the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility”<sup>43</sup>. He further states that “The national conscience may well be accepted by the courts as an authoritative guide; and of this conscience national custom is the external and visible sign”<sup>44</sup>.

“Custom”, says Austin, “is a rule of conduct which the governed observed spontaneously and not in pursuance of law set by a political superior”<sup>45</sup>. Sir C.K. Allen also defines custom “as legal and social phenomenon growing up by forces inherent in society— forces partly of reason and necessity and partly of suggestion and imitation”<sup>46</sup>.

Citing the *Tanistry Case* (1908), Dav. 29, Viner states that, “A custom, in the intendment of law, is such a usage as hath obtained the force of law, and is in truth a binding law to such a particular places, persons and things which it concerns....But it is *ius non scriptum*, and made by the people only of such places where the custom is”<sup>47</sup>. In *Tanistry Case*, custom is further described in these words “it is *ius non scriptum* and made by the people in respect of the place where the custom obtains. For where the people find any act agreeable to their nature and disposition, they use and practice it from time to time, it is by frequent iteration and multiplication of the act that the custom is made and being used from time to time which memory runneth not to the contrary obtained the force of law”<sup>48</sup>.

According to Keeton, ‘Customary law may be defined as those rules of human action established by usage and regarded as legally binding by those to whom the rules are applicable, which are adopted

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<sup>36</sup> Mohanti, K.K., “Custom Vis-à-vis Law: Some Reflections on Marriage Customs and Rules Among Caste and Tribal Communities”, in “ADIVASI: Journal of the Scheduled Castes & Scheduled Tribes Research and Training Institutes”, Bhubaneswar, Vol. 44, No. 1 & 2, June & December 2004, p 12

<sup>37</sup> Mohanti, *ibid*, p 13

<sup>38</sup> Cited in, Mahajan, Dr. V.D., “Jurisprudence and Legal Theory”, (2007), Eastern Book Company, Lucknow, p 254.

<sup>39</sup> Mahajan, *ibid*, p 254

<sup>40</sup> AIR 1955 Mad 144

<sup>41</sup> 26 W.R. 55 (P.C.); cited in, Tondon, M. P., “Jurisprudence (Legal Theory)”, (2010), Allahabad Law Agency, Faridabad, p 167

<sup>42</sup> Gour, Sir Hari Singh, “The Hindu Code”, (1973), Law Publishers, Allahabad, Vol. I, p 156

<sup>43</sup> Fitzgerald, P.J., M.A., “Salmond on Jurisprudence”, (1997), N. M. Tripathi Pvt. Ltd., Bombay, p 190

<sup>44</sup> Fitzgerald, *ibid*, p 191

<sup>45</sup> Cited in, Tondon, p 167

<sup>46</sup> Allen, Sir Carleton Kemp, “Law in the Making”, (1964), Oxford University Press, Ely House, London W.I., p 111

<sup>47</sup> Cited in, Allen, *ibid*, p 70

<sup>48</sup> Cited in, Ningshen, Varesco, P.G. Dept. of Law, Gauhati University, “The Thangkhul (Naga) Customary Laws: A Critical Legal Study”, (2008), a thesis submitted to the University of Gauhati, p 23

by the courts and applied as source of law, because they are generally followed by the political society as a whole, or by some part of it'<sup>49</sup>. The Hindu Code defines custom and usage as "Any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law...in any local area, tribe, community, group or family, if it is certain and not unreasonable or opposed to public policy"<sup>50</sup>.

### **Core terms associated with custom and customary law**

The word custom is used to apply to totality of behavior patterns which are carried by tradition and logged in the group, as contrasted with the more random personal activities of the individual. It is not properly applicable to those aspects of communal activity, which are obviously determined by biological considerations. Custom is often used inter-changeably with convention, tradition and mores, but connotations are not quite the same. Convention emphasizes the lack of inner necessity in the behavior pattern and often implies some measure of agreement, express or tacit that a certain mode of behavior be accepted as proper. The more symbolic or indirect the function of a custom, the more readily it is referred to as a convention<sup>51</sup>.

**Conventions** imply rules of conduct prescribing the "do's" and "do not's" by and for the members of a group. In other words, these are those standardized and preserved set of rules of conduct and behavior which guides the members of a given community in the matters of what to be done and not to be done. These are different from legal rules, moral precepts and fashions by the degree of obligation felt towards their fulfillment, the kind of reaction evoked by their violation, the form of sanctions to enforce them and their degree of permanence. They are less binding and authoritative than moral precepts and legal rules. "Legal and moral rules, on the other hand, apply more generally within given communities. Conventions, although variable when considered over long periods of time, are relatively more permanent than fashions<sup>52</sup>.

**Culture is the shorthand version of rules**, which guide the way of life of the people in societies. It is defined as the sum total of learned behavior traits and through culture human society develops standardized modes of action on which individual behavior is to be patterned. Such patterns of behavior, called social norms, are popularly known as custom. 'Custom is a variable common sense concept, which has served as the matrix for the development of the more refined and technical anthropological concepts of culture'.<sup>53</sup> Originally customs are individual habits and in course of interaction among individuals they get diffused in the society. These diffused habits tend to maintain themselves and transmitted from generation to generation by their repeated use and practice.

**Tradition** implies the historic background of custom. The difference between both the concepts is more subjective than objective. Traditions are 'social memories' which consists of impressions concerning the tangible world, the intangible world and the conceptual world. The traditions in any field, plus current opinion in that field, form the standards, ideals, faiths, isms, of the time<sup>54</sup>. While customs are habitual ways of conduct among a social group, some of the inherited or transmitted customs, institutions,

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<sup>49</sup> Cited in, Tondon, *Supra* note 6 p 168

<sup>50</sup> Section 3(a) of The Hindu Marriage Act, 1955; see also section 3(a) of The Hindu Adoptions and Maintenance Act, 1956

<sup>51</sup> Sapir, E.1953:658 cited from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P2

<sup>52</sup> Ginsberg, M.,1930:352 cited from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P2

<sup>53</sup> Sapir, E. 1953:658 cited from from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P2

<sup>54</sup> Bogardus, E.S. 1940:453. cited from from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P3

speech, dress laws, songs and tales which carry certain values are traditions and the application of the term implies value judgment for the inherited element. While customs are ways of acting among certain people or in a certain area, “a tradition is not a mere observed fact like an existing custom, nor a story that exhausts its significance in being told, it is an idea which expresses a value judgment”<sup>55</sup>.

The custom, which generates strong feelings of rightness or wrongness of conduct, is called **mores**. ‘The mores of a people are its unformulated ethics as seen in action.’<sup>56</sup>. Mores are powerful mechanisms of social control. ‘Mores’ as defined by Sumner are ‘..... the popular habits and traditions when they include a judgment that they are conducive to societal welfare and when they exert coercion on the individual to conform to them, although they are not coordinated by any authority.’<sup>57</sup>. **Morals** are those mores which have become positive in dogma and which dominate on account of their importance, real or assumed.”<sup>58</sup>. Morals are those mores, which lead to the right conduct of a group, and is formed out of taboos and prescriptions in the folkways. Mores are never intuitive and therefore ‘they are historical, institutional and empirical. They are regarded as engine of social control which regulate the political, social and religious activities of the individual.’<sup>59</sup>

**Taboos** are mores in negative forms. Margaret Mead defines taboo, ‘as a negative sanction, a prohibition, whose infringement results in an automatic penalty without human or supernatural mediation’.<sup>60</sup>

### **Classification of Customs**

Customs are habits of action or patterns of conduct which are generally observed by classes or groups of people. Such habits of action or pattern of conduct (customs) can be classified into a) Customs without binding obligation and b) Customs with definite binding obligation.

#### **a) Customs without Binding Obligation**

Customs which are concerned with less important aspects of social are called customs without binding obligations, for example, women wearing saree while observing rituals. Most societies have certain customs with respect to the kind of dress one is expected to wear on various occasions but it is not always obligatory. No man is under an absolute compulsion to give a feast at the time of marriage or on his birthday, etc. Such customs are non-binding in the sense that they are not obligatory to follow. People follow them due to the social pressure of public opinion. When a custom of this type is violated, society usually reacts by showing social displeasure or disapproval; but it has no sanction in the strict sense of the term. Such customs can be called as ‘Social Customs’.

#### **b) Customs with Definite Binding Obligation**

Such customs which in a more definite and stringent sense is regarded as the specific duties and obligations of men are understood as customs with definite binding obligations. Such customs may regulate the obligation of marriage and the upbringing of children, the transmission of property at

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<sup>55</sup> Radin, M. 1930:63. Tradition. in Encyclopaedia of Social Sciences, Vol. XV, Ed. E.R.A.Seligman. The Macmillan Company, New York. Pp 62-67

<sup>56</sup> Sapir, 1953:658 cited from from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P3

<sup>57</sup> Sumner, W.G. and A.G. Keller. 1927. Science of Society. New Haven. P 28-34

<sup>58</sup> Davie, M.R. 1931:294 Folkways, Encyclopaedia of the Social Sciences, Vol. V-VI Ed. E.R.A. Seligman. The Macmillan Company, New York. Pp 293-296.

<sup>59</sup> Sumner, 1907:29 cited from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P4

<sup>60</sup> cited from SCSTRTI – Ota, A.B. Ed. Tribal Customs and traditions. P4

death, or the modes of consummating and fulfilling agreements. Such customs do not pertain to the sphere of social formalities, outward decorum, or aesthetics; rather, they are concerned with the serious business of society, the work that must be accomplished in order to secure and guarantee satisfactory conditions for collective life”<sup>61</sup>. Customs covered in this category are backed by sanction which is more certain in its operation than any other social customs. **Such customs, if satisfy certain standards or tests, acquire legal character, and their violation is met by typical sanctions employed by the legal order. Such customs are enforceable and obligatory. Such customs can be further divided into Legal Customs and Conventional Customs.**

For the purpose of the present study the researcher is more concerned with Legal Customs than to mere Social Customs.

### **b.1) Legal customs**

‘Legal Custom’ occupies a place by itself in that its sanction is more certain in its operation than that of any other. “The effect of sanction”, writes Sir C. K. Allen,<sup>62</sup> “is negative rather than positive: if the custom is not followed, certain desired consequences will not be brought about.” For example, if a particular custom is not followed, the marriage will not be treated as valid; the desired consequences of becoming a husband and wife will not be brought about. Children out of such marriage will not be treated as legitimate. Law, back by the opinion at the earlier stage and at later stages by the tribunals of the community, will forbid those relationships to be effected.

Customary rules are ‘legal’ in the sense that they are binding and obligatory rules of conduct (not merely of faith and conviction), and the breach of them is a breach of positive duty. In legal custom no option, however small, is left to the individual, as in other social customs. Legal custom is operative *per se* as a binding rule of law, independent of any agreement on the part of those subject to it. According to Salmond, ‘A legal custom is one whose legal authority is absolute - one which in itself and *proprio vigore* possesses the force of law’<sup>63</sup>. Legal custom may further be classified as General Custom and Local Custom.

#### **b.1.1) General customs**

General custom is that which prevails throughout the country and constitutes one of the sources of the law of the land. It prevails throughout the territory of the state and is observed by all the members of the society. There was a time when common law was considered to be the same as the general custom of the realm followed from ancient time<sup>64</sup>.

#### **b.1.2) Local customs**

A local custom is a custom confined to a particular locality and constitute a source of law for that locality only. According to Salmond, “The term custom in its narrower sense means local custom exclusively”<sup>65</sup>. The western concept of local custom which applies only to a defined locality such as a district or a town, does not similarly apply to the Indian situation. Local custom here implies to

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<sup>61</sup> Bodenheimer, Edgar, “*Jurisprudence: The Philosophy and the Method of Law*”, First Indian Reprint (1996), Harvard University Press, U.S.A., p 300

<sup>62</sup> Allen, p 68

<sup>63</sup> Fitzgerald, pp 192 -193

<sup>64</sup> Mahajan, p268

<sup>65</sup> Fitzgerald, p 198

something more than a geographical locality. In India, local custom may be divided into two classes – Geographical Local Customs and Personal Local Customs. These customs are law only for a particular locality, sect, or family<sup>66</sup>.

'Tribal custom', says Sir Hari Singh Gour, 'is a custom confined to a particular tribe, caste or community'<sup>67</sup>. Tribal custom, in certain cases, applies to geographical local custom where the population of a particular district or town or region is covered by the said tribal community at the most. However, in other cases it applies both to the geographical locality and the personal locality. **Customs and the customary laws of the Tribes, the subject-matter of the present study, fall in the latter category.**

## **b.2) Conventional customs**

According to Salmond, 'A conventional custom is one whose authority is conditional on its acceptance and incorporation in agreement between the parties to be bound by it'.<sup>68</sup> He further stated that, 'In the language of English law the term custom is more commonly confined to legal custom exclusively, while conventional custom is distinguished as usage. Usages are not laws *ex proprio vigore*'<sup>69</sup>. **A conventional custom or usage is a practice established by having been followed for a considerable period of time, and arising out of a contract between the parties; it does not arise out of its own force. Thus, a usage, or conventional custom is an established practice which is legally binding, not because of any legal authority independently possessed by it, but because it has been expressly or impliedly incorporated in a contract between the parties concerned.**

Conventional custom may, again, be divided into two types: General Conventional Customs and Local Conventional Customs. General Conventional Customs are extensively practiced throughout the realm; whereas Local Conventional Customs are limited to a particular place or to a particular trade or transaction.

## **What is a valid custom**

A custom to be told valid must see that it has the essentials within. Essentials of a valid custom can, broadly, be classified into – Formative Essentials and Operative Essentials. Antiquity, Uniformity/Continuity, Certainty and Conscious acceptance as of right, etc. are the essential formative elements of a valid custom. Custom possessing these elements is *prima facie* valid though it may be unenforceable if it is unreasonable, opposed to morality, public policy, express enactments of legislature and for want of proof; all these are invalidating elements. Therefore, in order to be valid, a custom must be reasonable, should not be opposed to morality, public policy, express enactments of legislature and must be strictly proved. All these are operative elements. Hence, in order to be valid custom must possess all the formative as well as operative elements.

According to Blackstone, "a custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary".<sup>70</sup>Salmond also states that, custom, to have the force of law, must be immemorial. It must have existed for so long a time that, in the language of

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<sup>66</sup> A kulachar, or family custom is a custom, the existence of which is confined to a single family. Gour, Supra note 7 at p 158

<sup>67</sup> Gour, Supra note 7, p 158

<sup>68</sup> Fitzgerald, Supra note 8, p 193

<sup>69</sup> Dias, R M W, "Jurisprudence", First Indian Reprint (1994), Aditya Books Private Limited, New Delhi, p 192

<sup>70</sup> Mahajan, Supra note 3 at p 269



law, "the memory of man runneth not to the contrary"<sup>71</sup>. Professor Plucknett quotes Azo (d 1230) who said: 'A custom can be called *long* if it was introduced within ten or twenty years, *very long* if it dates from thirty years, and *ancient* if it dates from forty years'<sup>72</sup>.

The rule that 'a custom in order to be legal and binding must have been used for so long that the memory of man runneth not to the contrary' is neither opposite nor useful when applied to Indian conditions. In India, there is no such fixed date or technical rule to determine antiquity of a custom<sup>73</sup>. It will depend upon the circumstances of each case<sup>74</sup>. The courts are; therefore, free to decide the question upon the facts of each case. The courts have time and again expressed an opinion that if a custom is established to be 100 years old it is sufficient antiquity to be called ancient<sup>75</sup>.

Section 3(a) of the Hindu Marriage Act, 1955 lays down that custom to be valid must have been observed for a 'long time'. What the law requires before an alleged custom can receive the recognition of the court and so acquire legal force, is satisfactory proof of usage so long and invariably acted upon in practice as to show that it has by common consent been submitted to as the established governing rule of the particular family, class, or district or country; and the course of practice upon which the custom rests must not be left in doubt, but proved with certainty<sup>76</sup>. If a custom is found to have existed at a particular date within living memory, it must be taken to have the ordinary attribute of a custom that it is ancient, and may assume to have existed prior to that date<sup>77</sup>.

Sir Hari Singh Gour stated that, the custom must, in theory, at least, be of an origin as ancient as the law itself to which it constitutes an exception.<sup>50</sup> This is true, especially; because, every custom is in some fundamental respect an *exception* from the ordinary law of the land<sup>78</sup>. Sir Hari Singh Gour also maintains that, 'Custom is an established practice at variance with the general law.'<sup>79</sup>

One of the essential elements of a valid custom, as has already been discussed above, is that, it **must be ancient**. From the fact that the custom is ancient, it follows that it must be uniform (and not variable), definite and continuous, for these are the elements to establish its immemorial use. **If there is discontinuance, such discontinuance destroys its stability**. If a custom has not been followed continuously and uninterruptedly for a long time, the presumption is that it never existed at all. Blackstone says that, interruption within legal memory defeats the custom '*continua dico ita quod non fit legitime interrupta*'<sup>80</sup>. It is immaterial whether such discontinuance was accidental or intentional. In its effect it amounts to an abandonment of the custom.

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<sup>71</sup> Fitzgerald, at p 201

<sup>72</sup> Dias, at p 188

<sup>73</sup> However, the Calcutta High Court in *Nolin Behari v. Hari Pada*, AIR 1934 Cal 452 took a view that either 1773 or 1793 is material point of time to decide question of antiquity. In 1773 by the Act of Parliament the Supreme Court was established and after 1793 there is registry of regulation. That is why, according to Calcutta H.C. these two dates are to be taken into consideration while deciding the question of antiquity. The Calcutta H.C.'s view has been questioned by many jurists and judges.

<sup>74</sup> *Jai Sukh v. Manohar Das*, AIR 1967 HP 15

<sup>75</sup> *Umrinath Chaudhari*, *Supra* note 39

<sup>76</sup> *Sivananja v. Muthu Ramalinga*, (1866) 3 Mad H.C. 77 at p. 77. Affirmed in, *Ramalakshmi v. Sivnantha*, (1872) 14 MIA 570; *Saudamini Works v. State of Orissa*, ILR (1959) Cut 365

<sup>77</sup> *Kunwar Basant Singh v. Kunwar Brijraj Singh*, AIR 1935 PC 132

<sup>78</sup> Allen, at p 130

<sup>79</sup> Gour, at p 156

<sup>80</sup> Allen, at p 136

When it is said that the **custom must be uniform what is implied is that, within its circle of authority, it must have been given effect to as often as there was occasion to have recourse to it.** “A custom is not uniform”, says Sir Hari Singh Gour, “if it is intermittent and not continuous. But law distinguishes the interruption of a right from the interruption of its enjoyment. If there is interruption of right, no matter for how short a period the right is extinguished, and if the right is revived it may become the starting point of a new custom, but it ceases to be the continuance of the old custom, and if the new right arose within the time of legal memory so that its commencement is known, it ceases to be an ancient custom.”<sup>81</sup> From the fact that the custom must be uniform it follows that it must be consistent.

Custom must be consistent with each other. Two contradictory customs cannot exist in the same place with reference to the same people. Therefore, according to Blackstone, “One custom cannot be set up in opposition to another. For if both are really customs then both are of equal antiquity, and both established by mutual consent, which to say of contradictory customs is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another’s garden, the other cannot claim a right by custom to stop up or obstruct those windows: for these are contradictory customs cannot both be good, nor both stand together.”<sup>82</sup>

In order to be valid, **custom must be certain and definite.** Willes C.J. in *Broadbent v. Wilkes* observed that, a custom must be certain ‘because, if it be not certain, it cannot be proved to have been time out of mind, for how can anything be said to have been time out of mind when it is not certain what it is?’<sup>83</sup> To the same effect Jessel M.R. observes: ‘When we are told that custom must be certain—that relates to the evidence of a custom. There is no such thing as law which is uncertain—the notion of law means a certain rule of some kind.’<sup>84</sup> Custom must be certain in respect of (i) its nature; (ii) its locality; and (iii) the persons whom it is alleged to affect. Custom is observed ‘as of right’. Therefore, in the first place, the right asserted as a customary right, must be clearly defined and definitely certain. For if the right is uncertain, the custom itself cannot be proved. Secondly, the custom must be certain as regards the locality where it is alleged to exist. Its local extents must be defined with reference to the geographical division of land, such as district, town, village, etc. Thirdly, custom must be certain in respect of the person or classes of persons to whom it is made applicable.

Therefore, in order to be valid, **custom must have been consciously accepted as having the force of law. It must have been observed as of right and must have been enjoyed peaceably.** Allen states that, the public which is affected by the usage must regard it as obligatory, nor as merely facultative<sup>85</sup>. According to Sir Hari Singh Gour, enjoyment of custom must be “as of right, and therefore, neither by violence nor by stealth, nor by leave asked from time to time”<sup>86</sup>.

A **custom must be reasonable** is another essential requirement of a custom. The authority of usage is not absolute, but conditional on a certain measure of conformity with justice and public utility. This does not mean that the courts are at liberty to disregard a custom whenever they are not satisfied as to its absolute rectitude and wisdom, or whenever they think that a better rule could be formulated in the exercise of their judgment.

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<sup>81</sup> Gour, at p 163

<sup>82</sup> Mahajan, at p 272

<sup>83</sup> See, Allen, at p 139

<sup>84</sup> Allen, at p 139

<sup>85</sup> Allen, at p 137

<sup>86</sup> Gour, at p 165

Reasonableness of a custom is an essential requirement of its validity. However, it cannot be said that custom is always founded on reasons. No amount of reason can make a custom. What is reasonable or unreasonable is a matter of social values. It may differ from time to time, from place to place. Therefore, whether a custom is reasonable or not is determined by the contemporary values of every society, though there are certain rules or practices which are considered unreasonable at all times and in all societies. The law courts will not enforce unreasonable customs, for law will not allow what is unreasonable or inequitable in spite of the fact that the people or a class of people in a locality has given their long acquiescence to a particular practice, if it finds that to allow it would do more harm than what might result by its disallowance.

To ascertain the reasonableness of a custom, it must be traced back to the time of its origin. The unreasonableness of a custom in modern circumstances will not affect its validity if the court is satisfied of a reasonable origin. A custom once reasonable and tolerable, if after it becomes grievous, and not answerable to the reason whereupon it was grounded, yet it is to be taken away by Act of Parliament or any other appropriate statute. But where the court finds a custom in existence which, either by aberration or by a change in law since its origin, not merely differs from but directly conflicts with an essential legal principal, it has power in modern communities to put an end to the custom. In short, custom once indisputably proved is law, but the courts are empowered on sufficient reason to change the law which it embodies.

A custom to be valid must not be opposed to principles of morality or public policy and must not be expressly forbidden by an enactment of the legislature.

### **Custom is the essence of law**

Customs in respect of rights and duties of individuals of a social group leads to law. The examples of many tribal societies establish the fact that the essential difference between custom and law does not lie in the difference between oral tradition and written formulation of custom. 'Law can emerge from custom long before the development of writing...When custom has the psychological compulsion of law but is not controlled by society, through imposition of explicit penalties, it may be called ethics or more primitively mores'.(Sapir, 1930:661)<sup>87</sup>.

Distinction between law and ethics in simpler forms of society is difficult because both emerge from custom in somewhat divergent manner. 'Laws are those folkways and mores which in addition to the uncoordinated approval of public opinion are given the added and specific sanction of the group as organized politically... Folkways and mores, laws and taboos, culture traits and customs are specifically human phenomena'.(Davie, 1931:295)<sup>88</sup>.

A custom becomes law when dispute arises about it and the custom is enforced so that it becomes obligatory. In other words custom becomes law when it acquires clear and definite sanction. Therefore customary is also called 'case law' and goes as far as from the 'living memory'. Hindu law, which is mostly customary, was being extensively applied by the courts in British India. "Custom still plays a part in adjusting law to new situation even in highly codified systems and thus is a continuing source of contemporary law... written constitution... tends to become largely customary. International law has been called customary. One of the modes of infiltration of customary law into 'positive law' is through

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<sup>87</sup> Cited from SCSTRTI - Tribal Customs and Traditions. P4

<sup>88</sup> Ibid p5

'interpretation' of the written law. Appeals are made to the 'unwritten law' before the juries in accordance with persistent prevailing conceptions of 'right' and wrong."(Lobingier, 1930:666)<sup>89</sup>.

A custom becomes customary law with the backing of definite sanction. According to Radcliffe-Brown (1934: 531)<sup>90</sup> "all social usages have behind them the authority of the society, but among them some are sanctioned and others are not. A sanction is a reaction on the part of the society...to a mode of behavior which is thereby approved (positive sanctions) or disapproved (negative sanctions)". There are two types of social sanctions, 'diffuse' and 'Organised'. Diffused sanctions are spontaneous individual reactions but unorganized while organized sanctions are carried out by the community or its agencies as per established traditional procedure. Negative sanctions are more definite and binding than positive sanctions. Besides, there are also religious or supernatural sanctions linked with religious beliefs and practices, concept of ritual purity and pollution, morals and ethics, which distinguish sin from crimes or offences.

While positive sanctions express in terms of rewards, awards, medals, praises, applauses, honor for good and noble deeds, negative sanctions manifest in public opinion and punishments like ostracism, black-listing, unpopularity, disapproval, against breach of norms."Laws that punish offenders are negative sanctions, but sanctions are a more inclusive category, found in all societies, whether they have law courts and prisons or not. These sanctions are learned in the process of socialization as one grows up."(Barrow, 1979:300).Radcliffe-Brown said, "Organized negative sanctions in particular and to a great extent the secondary sanctions, are expressions of a condition of dysphoria brought about by some deed. The function of the sanction is to restore the social euphoria by giving definite collective expression to the sentiments, which have been affected by the deed...The sanctions are thus of primary significance...in that they are reactions on the part of a community to events affecting its integration".(1934:533-534)<sup>91</sup>.

According to justice Lahiri (1974)<sup>92</sup>, "Customs are habits or conducts observed by classes or groups of people; may they relate to etiquette, dress, rights surrounding important events of life such as birth, marriage and death". Every society must have their own customs. Some amongst them are well established. They fall within the group styled as social custom. Customary practices are universal in character because these are observed in all kinds of societies, savage or civilized. Custom embodies those rules or norms, which are acknowledged and approved by the public opinion of the society and sanctioned by the will of the community. There is indeed, a nexus between the ever-changing socio-cultural value system and the well accepted customary rules and practices.

The essential attributes of a valid custom according to justice Pathak (Hindu Law; 1976:18)<sup>93</sup> should be ; (1) Ancient, (2) Reasonable, (3) Continuous, (4) Certain, (5) Uniform and obligatory, (6) Not immoral (7) Not against public policy, (8) not against statute and (9) Proved by clear and unambiguous evidence. Further addition and elaboration to the above attributes would be as follows:-

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<sup>89</sup> Ibid p5

<sup>90</sup> Ibid p5

<sup>91</sup> Barrow,V. 1979. Anthropology and the Human Experience, Dorsey Press, Homewood, Illinois cited from SCSTRTI – Tribal Customs and Traditions, p5

<sup>92</sup> cited from SCSTRTI – Tribal Customs and Traditions, p6

<sup>93</sup> cited from SCSTRTI – Tribal Customs and Traditions, p6

- a) There is authority behind a custom
- b) A custom should not go against justice, equity and good conscience.
- c) A custom becomes valid by the ascent of the community.
- d) Custom are not theories but matters of facts.
- e) Customary law is a fluid state as it changes with time.

The explanation behind the prevalence of customary practices for social control and conformity is that in a society the activities of an individual is controlled and determined in a big way by the likes and dislikes of other fellow individuals. An individual living in a homogeneous society receives help and advice from his fellowmen. He derives benefits from his association and involvement in social organization and becomes a part and parcel of the social systems. He becomes dependent on his fellowmen, bound by a distinctive set of social relations. The process of social relationships calls for social control and curbing some of his personal actions and wishes for greater good of the entire society.

Custom is more powerful and more persistent in simple primitive society than the complex modern society. "The primitive community has also no written tradition to appeal to as an impersonal arbiter in matters of custom and therefore puts more energy into conservation of what is transmitted through activity and oral tradition. Custom among primitive peoples is apt to derive some measures of sacredness from its association with magical and religious procedures." (Sapir, 1930:660)<sup>94</sup>.

Some sort of political organization is necessary to keep control over the behavior of the members of every society. The political organization administers laws of various kinds to regulate the conduct of its members and maintain social order. Law is a social institution because it is enforced and backed by social sanctions. Societies cannot function without normative rules of conduct that grows out of customary practices. But such normative rules are not exactly same as laws. But there is relationship between customs and laws. Laws are generally in line with a culture's definitions of rights and wrongs. Laws that are not in line with such definitions are difficult to enforce. There are complications however to analyse law in terms of customs and normative rules because societies differ greatly in their beliefs about right and wrong.

#### **Customs and the statute law: Proof of custom**

A custom must not be in conflict of with the statute law of the country. According to Coke, "No custom or prescription can take away the force of an Act of Parliament."<sup>95</sup> A statute can abrogate a custom and not vice versa. 'Customs', says Allen, 'are *local variations* of the general law. But they must not be more than variations. **It is one thing for a custom to be a local variation of the general law, another for it to negate the very spirit of law**<sup>96</sup>. **It is a well-established principle that though a custom has the effect of overriding the law which is purely personal, it cannot prevail against a statute law, unless it is thereby saved expressly or by necessary implication.** Thus section 4 of the Hindu Marriage Act, 1955 lay down that, save as otherwise expressly provided in this Act, any custom or usage immediately before the commencement of the enactment shall cease to have effect with respect to any matter for which provision is made in this statute. Thus custom must yield where it conflicts with statute.

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<sup>94</sup> cited from SCSTRTI – Tribal Customs and Traditions, p7

<sup>95</sup> Mahajan, at p 272

<sup>96</sup> Allen, pp 131 -132

Under the Indian law, custom is a question of fact and the burden of proof is on the party who relies on the custom<sup>97</sup>. A custom which is repeatedly brought to the notice of the courts may be held to be introduced into law without the necessity of proof in each particular case<sup>98</sup>. Therefore, when a custom is recognized by the courts for a long time, it is not necessary to prove it each and every time as the court can take judicial note of the same.

**The existence of a custom can be proved by the opinion of a person likely to know of its existence, or having special means of knowledge thereon as provided under sections 48 and 49 of the Indian Evidence Act, 1872.** Section 48 lays down that when a court has to decide as to existence of any general custom or general right, the opinion of persons, who would have known the custom if it existed, is relevant. Section 49 deals with family customs or customs of any body of men. **According to section 32(4) of the Indian Evidence Act, 1872, existence of customs can be proved by statements of persons who are dead, or whose attendance cannot be procured without reasonable delay or expense, if such statements were made before any controversy to such customs arose.** These statements must relate to the existence of any public right or custom or matter of public or general interest.

Section 13(a) of the Indian Evidence Act, 1872 lays down that **any transaction by which the rights or customs in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence is relevant to prove the existence of custom or right.** Therefore, if in a transaction in which a custom was involved, such custom was taken notice of, claimed, modified, relied, asserted, demanded or its very existence or non-existence of such a custom may be proved by that transaction. Transaction as contemplated under section 13 is a genuine and *bona fide* transaction. Therefore, *benami* transaction which is not meant to be acted upon is fictitious transaction and in the eye of law is not a transaction at all<sup>99</sup>. Section 13(a) speaks of transactions “by which” the right or custom is created, asserted, etc., and not those “in which” the right or custom is asserted, etc. The nature and scope of the transaction is thus the pertinent consideration.

The **proof of custom by instances is, probably, the largest aspect of proof of custom.** “The most cogent evidence of custom is not that which is afforded by the expression of opinion as to its existence, but the examination of instances in which the alleged custom has been acted upon, and by the proof afforded by judicial or revenue records or private records or receipts that the custom has been enforced.<sup>100</sup>”. Instances of custom can be of various types. **They may be oral instances, instances recorded in documents or judgments in which instances were asserted and accepted or rejected. Section 13(b) of the Indian Evidence Act, 1872, deals with “instances”.** It says, where the question is as to whether a certain right or custom exists, the particular instances in which the right or custom was claimed, recognized, exercised, or in which its existence was disputed, asserted or departed from may be proved. The term “instance” means an example; something which has once occurred. According to Batuk Lal, it must be borne in mind that the instances in which the right or custom was claimed, recognized, exercised, etc., must be instances prior to the suit in question, because this clause is in the

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<sup>97</sup> *Mst. Kripal Singh v. Bachhan Singh*, AIR 1958 SC 199

<sup>98</sup> see, *Mahant Bhagwan v. Girija Nandan*, AIR 1972 SC 814

<sup>99</sup> *Anwar Ali Khan v. State of Assam*, AIR 1944 Cal 57

<sup>100</sup> *Lachman v. Akbar*, ILR 1 All 440, Cited in, Gour, p 176

past tense throughout<sup>101</sup>. In customary law it is an adage that, 'custom grows out of the instances and acquired the force and sanctity on their multiplication.' These instances may be in some record or document or they may be in the memory of people. The non-contest of right or custom may raise a presumption that the custom was so well recognized that one thought of contesting it. The uncontested cases are a very good proof of an alleged custom, for greater the strength of custom, the less probability is there for anybody attempting to controvert it.

According to Robertson J., "The very best evidence of a custom is that which shows that it has been followed consistently in a number of instances without dispute."<sup>102</sup> The evidence of instances is very important to prove a custom but its absence is not fatal to the proof of custom. The instances, though an important evidence of custom, are not absolutely essential to its establishment. It has been observed by Privy Council that, a court cannot disregard the large body of general evidence before it in proof of customs merely on the ground that specific instances had not been proved, certain customs may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence and its exercise without controversy.<sup>103</sup> However, when a custom is sought to be proved by general evidence, the general evidence should be such that there is practical unanimity on a point of custom in village after village and among a large number of witnesses.

So far as instances are concerned, no hard and fast rule can be laid down as to how many instances are sufficient to make out a valid custom. There should, however, be such a multiplication or aggregation of instances as is sufficient to establish a tangible recognition of custom as obligatory.

**Village oral traditions have been considered to be a good evidence of custom.** The deliberate and well-considered opinion of the people living and governed by custom is a recognized mode of proof of custom. The question 'whether a particular custom does or does not prevail in any particular tribe' is a matter on which tribesmen themselves are in the best position to pronounce an opinion. Whenever questions as regards to tribal customs are to be determined, the parties try to secure the evidence of the members of that tribe and even people living in the neighbourhood, as regards the existence or nonexistence of the custom. The people of a particular community are the best and the most trustworthy repositories of the traditions which go to constitute a particular custom prevailing in that community and their evidence, therefore, is of a great value.

A rule of custom may be established and held to of binding force, even where no instance is forthcoming, if there is an overwhelming preponderance of oral testimony of those governed by it and likely to know of its existence in its favour or if it is fairly deducible from the analogy of other well-known principles of customary law.

**Section 35 of the Indian Evidence Act, 1872 speaks of relevancy of entries in public or official book made by a public servant.** An entry to be admissible under this section—(1) must be contained in any public or official book, (2) must be made by a public servant, (3) in the discharge of his official duty or by a person in performance of duty specially enjoined by the law of the country, an (4) must be stating relevant factor in issue. Thus, records of rights or customs prepared by public officers

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<sup>101</sup> Batuk Lal, at p 482

<sup>102</sup> *Saddan v. Khemi*, 15 PR 1906, Cited in, Singh, Salam, at p 77

<sup>103</sup> *Ahmed Khan v. Channi Bibi*, AIR 1925 PC 267, Cited in, Ningshen, at p 88

(settlement officers) are important pieces of evidence, e.g., *Wajib-ul-arz*<sup>104</sup>, *Riwaj-i-am*, mutation entries, etc.

A decision in a case of custom is only relevant under section 13 of the Indian Evidence Act, 1872 as **judicial instance of the custom being recognized**. A judgment in a question of custom is relevant not merely as an instance under section 13, but also under section 42 of the Indian Evidence Act, 1872 as evidence of the custom. Section 42 of the Act says that, judgments, orders or decrees (other than those mentioned in section 41) are relevant if they relate to the matters of public nature, but such judgments, orders or decrees are not conclusive proof of that which they state. Section 42 permits custom to be proved by a judgment, decree or order not *inter partes*, in which it was recognized. But mere production of judgment, however relevant, is not conclusive proof of custom. Judgments under section 42 are only a piece of evidence of custom.

The general opinion seems to be in favour of the view that, a decision on custom only becomes relevant instances under section 13 of the Indian Evidence Act, 1872, that such a right has been asserted and recognized. It is always necessary to assert and prove what the custom is. However, to the general rule that all the customs have to be proved, section 57 of the Indian Evidence Act, 1872 provides an exception. When a custom is repeatedly ascertained and acted upon judicially, the production of such judicial decision is sufficient to prove the custom.

Authoritative manuals of customary law are sometimes considered as valuable evidence for proof of customary law. The courts freely admit into evidence published works of repute on the subject of custom.

### **Customary Law and Property**

Property designates those things commonly recognized as the entities in respect of which a person or group has exclusive rights. Important types of property include real property (land), personal property (other physical possessions) and intellectual property (rights over artistic creations, inventions, etc). a right of ownership is associated with property that establishes the good as being 'one's own thing' in relation to the other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she sees fit, whether to use or not to use, exclude others from using, or to transfer ownership. Some philosophers assert that property rights arise from social conventions. Others find their origins from mortality or natural law.

Various scholarly communities especially from the disciplines of law, economics, anthropology, sociology may treat the concept more systematically, but definitions vary within and between the fields. Scholars in the social sciences frequently conceive of property as a bundle of rights. They stress that property is not a relationship between people and things, but a relationship between people with regard to things. Some philosophers like Karl Marx use it to describe a social relationship between those who sell their labour power and those who buy it.

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<sup>104</sup> Initially, *wajib-ul-arz* was the record of right containing statement of custom prevailing in the villages of Punjab. They were prepared as village wise record of custom. Later on, the task of preparing *wajib-ul-arz* was given up, and, instead, *riwaj-i-am* was prepared; they were prepared district-wise. *Rewaj-i-am* in the Punjab is a record of local tribal customs prepared by an officer deputed for that purpose.



There exist many theories. Perhaps one of the most popular is the natural rights definition advanced by John Locke – that ‘when one mixes labour with nature, one gains ownership of that part of nature with which labour is mixed, subject to the limitation that there should be ‘enough and as good, left in common for others’.

### **Family, Property and State**

Property advantage stems not only from ownership but also from ownership but also from effective control over it. In societies which underwent socialist revolutions, while private property was legally abolished, control over wealth generating property remained with men. Indeed in most societies today it is men as a gender that largely control wealth generating property. Even property that is under state, community or clan ownership remains effectively under managerial control of selected men through their dominance in both traditional and modern institutions: castes or clan councils, state bureaucracies at all levels. Marxist analysis implicitly assumes that women belong to the class of their husbands and fathers.

### **Scheduled Tribes and Property Rights**

As is well known the entire gamut of property rights of a community belongs to that sphere of civil law, which is otherwise known as personal law or family law. The personal law also encompasses such family related legislations which bears on marriage, divorce, adoption, maintenance, guardianship and custody of children. In India, unlike Hindus, Muslims, Christians and Parsis, the personal laws including the property rights of scheduled tribes living in either 5<sup>th</sup> schedule or 6<sup>th</sup> schedule areas since colonial administration have remained diverse i.e. un-uniform and largely uncodified, and their determination for all practical purposes has been left to the customary usage and practices prevalent in the concerned community handed down across generations. So much so that even when certain practices of some scheduled tribes were expressly found to be contradictory to the modern canons of equality and justice as enshrined in the Preamble and Fundamental Rights Chapter of the Constitution, the Courts in general and Supreme Court in particular refrained from interfering in them on the statutory plea that the Scheduled Areas were immune from general applicability of the laws made for the mainstream and the non-scheduled regions of the country. Of course a fierce debate has all along been raised in the post-independence period as to the degree of legislative autonomy that a tribal area should enjoy, especially in respect of personal laws including the laws relating to the property rights.

#### **Hindu Law and Tribal Communities**

There reigns a fair amount of confusion among the jurists, administrators, legislators and social activists and also the common folks as to whether the Hindu personal law is applicable to the scheduled tribes. In fact the relevant Hindu laws also bear provisions, which have lent strength to such abounding confusion. For instance, the section 2(2) of Hindu Marriage Act, 1955 says, “notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of the clause (25) of article 366 of the Constitution, unless the Central Government, by notification in the Official Gazette, otherwise directs”. Against such a categorical stipulation there however exists two other provisions in the said section -2, which by implication convey a different meaning. For instance, section 2(1-C) says that the Act applies “to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or

by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed". Plainly it means that **there is a scope for application of Hindu law to any inhabitant of India, who is not a follower of above four institutionalized religions.** The next instance of exception can be found in Section-2(3), that says, **"The expression 'Hindus' in any portion of this Act shall be construed as if it included a person, who, though not a Hindu by religion is, nevertheless, a person whom this Act applies by virtue of the provisions contained in this section."** In a similar fashion, the **Hindu Adoptions and Maintenance Act, 1956 in Section 2(2) declares that the Act will not apply to the Scheduled Tribes as defined in the Constitution, but then proposes two qualifying provisions under the Section-2 itself, by virtue of which a person of Scheduled Tribe can be considered a Hindu under certain special circumstances for the purposes of this Act.** The third and fourth law in the series, namely Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956 replicate the said kind of provisions almost word by word. Thus we find that **all the four Hindu laws, which have nearly identical provisions under Section-2 are both exclusive and inclusive of Scheduled Tribe under its purview.** It all depends on the specific circumstances that shall determine whether the matters related to Personal Law in respect of an ST person shall be disposed of as per the Hindu Law or any other Law or as per the Custom or Usage of his/her community as already referred to under section 13(3) of the Constitution.

At the level of higher judiciary (High Court and Supreme Court), the scheduled tribes are treated as non-Hindus, but at the level of lower Courts there is a tendency among the lawyers to treat the ST persons as Hindus; otherwise it would entail arduous labour and forensic skill on their part to define the custom and usage of the particular right, and to articulate most of the argumentation from common sense and facts of the case without relying on any codified law or Court precedence. **Treating an ST person under the Hindu Law offers both advantages and disadvantages for the person concerned; for instance, a tribal woman would be entitled to a share in the property of her father or husband, if her complaint is treated under Hindu Succession Act while on the basis of their existing tribal custom or usage, she may not get that type of benefit.** From another angle, say for instance, on a case around her plea to get a divorce from her husband, it would be much easier on her part to get it allowed by the Court on the basis of the custom or usage of her tribe than under the Hindu Marriage Act, 1955.

It is worth noting that the Census reports of India do not treat the tribal communities as born Hindus. Appendix C to the census report of 1991 gives details of sects/beliefs/religions clubbed with another religion. According to this Annexure no tribal community has been clubbed with the followers of the Hindu religion in the report. The main part of the report shows the population, in various states and union territories, under eight different heads – (i) Hindus, (ii) Muslims, (iii) Christians, (iv) Sikhs, (v) Buddhists, (vi) Jains, (vii) 'Other religions and persuasions', and (viii) 'Religion not stated'. The head of 'Other religions and persuasions' is detailed in Appendix 'A' to the report. In this Appendix, about 60 tribal religions are separately specified. In addition to these specified "religions and persuasions" of the various tribal communities, this Appendix also includes a residuary head of "tribal religion" and, then, an additional head of "unclassified" religions and persuasions, which also must be inclusive of many smaller tribes.

### **Apex Court on Personal law of Scheduled Tribes**

The confusion with which the Constitution and other legal instruments of the union have treated the Personal Laws of the Scheduled Tribes have found their reflection in the directions and judgements that the Apex Court has issued from time to time. As a matter of fact, only a very few cases came up before the apex court seeking for its adjudication and direction on issues bearing on Personal Laws of the STs. Of these, the one that stands out in terms of comprehensiveness and in-depth treatment of the subject in the famous case of Madhu Kishwar and Ors vrs. State of Bihar that engaged the apex court for a decade from 1986 to 1996.

Ms. Madhu Kishwar, editor of 'Manushi', a women's magazine at New Delhi and two women petitioners, are belonging to Ho and other two Oraon scheduled tribes residing in then Singhbhum district of Bihar made a writ petition against the State of Bihar before the Supreme Court challenging the sections – 7&8 of the Chotanagpur tenancy Act of 1908 as discriminatory against women, since the said provisions confined succession to property to descendants in the male line of the scheduled tribes. They pleaded that the said provisions were ultra vires (any Act that lies beyond the authority of a Corporation to perform) to the equality clause in the Indian Constitution.

The Court at an earlier stage while hearing one of the writ petitions gave time to the respondent State of Bihar to consider the feasibility of carrying out an amendment in the offending sections so as to clearly provide that succession was not confined in the male line. In pursuance thereof, a committee was set up by the State which came to the conclusion that a custom prevailed among the scheduled tribes that a female heir be excluded from succession, and that if there was any change, and the property allow to go into the hands of female heirs there would be agitations and unrest among the ST people who have a custom based style of living. After hearing the report of the committee the Supreme Court held that the scheduled tribe people are as much citizens as others and they are entitled to the benefit of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the matter of succession to property with a view to maintaining cohesiveness in regard to scheduled tribes and their properties. But exclusion from inheritance would not be appropriate. Since this aspect of the matter was examined by the State, the Court ordered it to be re-examined by the feasibility of permitting inheritance and simultaneously regulating such inheritance for the purpose of ensuring that the property does not go out of the family by way of transfer or otherwise.

On 17 April 1996, a three member bench led by Chief Justice K. Ramaswamy did the final hearing of the case. They dealt with all problematic aspects of the issue of not allowing female inheritance of the paternal, ancestral or in-law's property and brought a judgement based upon the facts and circumstances within their knowledge.

The judgement starts to the recognition that the petitioners raised a common question of Law, whether the female tribal is entitled to parity with male tribal in inter-state succession? Specifically speaking, the petitioners sought declaration to the effect that sections 7, 8 and 76 of the Chotranagpur tenancy Act, 1908 are ultra vires to articles 14, 15, and 21 of the Constitution of India. They contended that the customary law operating in Bihar State and other parts of the country excluding tribal women from inheritance of land or property belonging to father, husband, mother and conferment of right to inheritance to the male heirs or lineal descendants being founded solely on sex is discriminatory. The tribal women toil, share with men equally the daily sweat, troubles and tribulations in agricultural operations and family management. The discrimination against them based on the customary law of inheritance is unconstitutional and unjust, unfair and illegal. Even usufructory rights conferred on a

widow or an unmarried daughter become illusory due to diverse pressures brought on her at the behest of lineal descendants. Further, the married or unmarried daughters are excluded from inheritance, if they are subjected to adultery by non-tribals; they are denied of the right to enjoy the property of the father or deceased husband for life. The widow on remarriage is denied of inheritance of property of her former husband. The petitioners had thus elaborated by narrating several incidents in which the women either were forced to give up their claims or became target of violent attacks or murders.

Throughout the country, the respective state laws prohibit sale of all lands in tribal areas to non-tribals, restoration thereof to the tribals in case of violation of law and permission of the competent authority for alienation is a must and mandatory and non compliance renders the sale void. The Acts prevailing in most states expressly prohibits the sale of the lands by the tribals to the non-tribals and also direct restoration or re-compensation by equivalent lands to the tribals in case of violations. Therefore, if the female heirs intend to alienate their lands to non-tribals the Acts could operate as a deterrent. In the event of any need for alienation, by a tribal woman, it would be only subject to the operation of these laws and the first offer should be given to the brothers or attendants. In the event of their refusal or unwillingness, the sale would be made to other tribals. In the event of a disagreement on consideration, the civil Court of original jurisdiction should determine the same which would be binding in the partition. In the event of their un-willingness to purchase the same, subject to the permission of the competent officer, tribal women may sell the land to tribals or non-tribals. Therefore, the apprehension expressed by the State level committee is unfounded in the case of Madhu Kishwar.

Chief Justice Ramaswamy held the view, "I would hold that the provisions of Hindu Succession Act, 1956 and the Indian Succession Act, 1925 go in terms, would not apply to the scheduled tribes, the general principles contained therein being consistent with justice, equity, fairness, justness and good conscience would apply to them. Accordingly, I hold that the scheduled tribe women succeed to the estate of their parent, brother, husband as heirs by intestate succession and inherit the property with equal share with male heir with absolute rights as per the general principles of Hindu Succession Act, 1956, as amended and interpreted by this Court and equally of the Indian Succession Act to tribal Christians. However, the right of alienation will be subject to the relevant provisions of the Acts like, the Bihar scheduled Areas Regulation, 1969, Santals (amendment) Act, 1958, Santal Pragana Tenancy (Supplementary Provisions) Act, 1949 as amended from time to time, etc. they would be applicable to them and subject to the conditions mentioned there in. in case the tribal woman intends to alienate the land, subject to obtaining appropriate permission from the competent authority under the appropriate Act, she should first offer the land for sale to the brother or in his absence to any male lineal descendant of the family and the sale will be in terms of mutually agreed consideration and other terms etc. in case of any disagreement on consideration shall be determined on an application filed by the either party before the competent Civil Court of original jurisdiction over the area in which the land is situated and the decision of the civil court after adoption of evidence and consideration thereof shall be final and binding on the parties. In case the brother or lineal descendant is not willing to purchase either by mutual agreement or as per the price settled by the Civil Court, the tribal woman shall be entitled to alienate the land to the non-tribal but subject to the provisions of the appropriate Act.

The judgement however says that the writ petitions were allowed conditionally. In lay man's parlance, it meant that the new principles and interpretations pronounced in the judgement may be given

intellectual weight but may not be acted upon right now by the concerned authorities in view of an absence of a clear-cut provision in law favouring the plea of the petitioners. Despite the fact that the above judgment did not exercise any instant impact on any of the authorities of the country, legislative, judicial or executive, all of whom were fervently exhorted to heed its new message, it has nevertheless remained to this day a landmark judgement and shall ever remain so until the date when every woman, be she tribal or not is given full and equal rights along with male descendants in the succession to ancestral and intestate property. Landmark for double reasons; firstly, it exhaustively exposes the glaring ambivalence and contradictions in the existing constitution and statutory provisions in respect to women's right to equal share in the property of the household; and secondly, it serves and shall continue to serve as a formidable advocacy tool for equal property rights for women as a key to women's emancipation.

It is said that the tribal folks are tradition-bound and custom-oriented. The members of the community, who through socialization get themselves acquainted with and adhere to the social customs, usages, conventions, folk-ways, mores, norms, ethos, values and ideologies play their roles as actors in the social system not only in defining the social identity of the society to which they belong but also in transmitting them to future generations. In the process of transmission, the customs undergo modification, re-interpretation and adaptation to the changing situation although some customs persists for a longer period. Factors, both endogenous or exogenous, are responsible for effecting such change and in course of time several old customs become obsolete and new ones emerge. Customary sanctions, therefore, are not rigid but exists in a fluid state and change in adaptation with changing time and circumstances.

Since no society is static and change is inevitable, the tribal society being simple is no exception to it. During the post-independence period various effective and welfare measures are taken in tribal areas to bring about rapid socio-economic development of the tribal people through adoption of various protective legislation and area specific, community specific as well as family oriented schemes and programs. Due to inroads of modernization, planned development intervention, implementation of multi-sectoral development programs including infrastructural development, economic upliftment, educational advancement, influence of mass media, development of consciousness and awareness, etc of the tribal communities are experiencing change in their socio-cultural life. The modern instruments like education, awareness, development interventions, PESA, provision of joint ownership by both the spouses of land under ST and OTFD Act, 2006, etc. if used effectively may go a long way in effecting the change in the age old customs and traditions relating to male oriented property rights in the patriarchal and patrilineal tribal society.

### **Customary law and tribal property rights**

Property designates those things commonly recognized as the entities in respect of which a person or group has exclusive rights. Important types of property include real property (land), personal property (other physical possessions) and intellectual property (rights over artistic creations, inventions, etc). A right of ownership is associated with property that establishes the good as being 'one's own thing' in relation to the other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she sees fit, whether to use or not to use, exclude others from using, or to transfer ownership. Some philosophers assert that property rights arise from social conventions. Others find their origins from mortality or natural law.

Various scholarly communities especially from the disciplines of law, economics, anthropology, sociology may treat the concept more systematically, but definitions vary within and between the fields. Scholars in the social sciences frequently conceive of property as a bundle of rights. They stress that property is not a relationship between people and things, but a relationship between people with regard to things.

In most societies today it is men as a gender that largely control wealth generating property. Even property that is under state, community or clan ownership remains effectively under managerial control of selected men through their dominance in both traditional and modern institutions: castes or clan councils, state bureaucracies at all levels. Marxist analysis implicitly assumes that women belong to the class of their husbands and fathers.

As is well known the entire gamut of property rights of a community belongs to that sphere of civil law, which is otherwise known as personal law or family law. The personal law also encompasses such family related legislations which bears on marriage, divorce, adoption, maintenance, guardianship and custody of children. In India, unlike Hindus, Muslims, Christians and Parsis, the personal laws including the property rights of scheduled tribes living in either 5<sup>th</sup> schedule or 6<sup>th</sup> schedule areas since colonial administration have remained diverse i.e. un-uniform and largely uncodified, and their determination for all practical purposes has been left to the customary usage and practices prevalent in the concerned community handed down across generations. So much so that even when certain practices of some scheduled tribes were expressly found to be contradictory to the modern canons of equality and justice as enshrined in the Preamble and Fundamental Rights Chapter of the Constitution, the Courts in general and Supreme Court in particular refrained from interfering in them on the statutory plea that the Scheduled Areas were immune from general applicability of the laws made for the mainstream and the non-scheduled regions of the country. Of course a fierce debate has all along been raised in the post-independence period as to the degree of legislative autonomy that a tribal area should enjoy, especially in respect of personal laws including the laws relating to the property rights.

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<sup>105</sup> Ray, M. (2009): Property Rights for Women: A case from Koya community in Orissa. Adivasi. SCSTRIL. Bhubaneswar. Nr.1, Vol.49

They pleaded that the said provisions were ultra vires (any Act that lies beyond the authority of a Corporation to perform) to the equality clause in the Indian Constitution.

The Court at an earlier stage while hearing one of the writ petitions gave time to the respondent State of Bihar to consider the feasibility of carrying out an amendment in the offending sections so as to clearly provide that succession was not confined in the male line. In pursuance thereof, a committee was set up by the State which came to the conclusion that a custom prevailed among the scheduled tribes that a female heir be excluded from succession, and that if there was any change, and the property allow to go into the hands of female heirs there would be agitations and unrest among the ST people who have a custom based style of living. After hearing the report of the committee the Supreme Court held that the scheduled tribe people are as much citizens as others and they are entitled to the benefit of guarantees of the Constitution. It may be that the law can provide reasonable regulation in the matter of succession to property with a view to maintaining cohesiveness in regard to scheduled tribes and their properties. But exclusion from inheritance would not be appropriate. Since this aspect of the matter was examined by the State, the Court ordered it to be re-examined by the feasibility of permitting inheritance and simultaneously regulating such inheritance for the purpose of ensuring that the property does not go out of the family by way of transfer or otherwise.

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The judgement starts to the recognition that the petitioners raised a common question of Law, whether the female tribal is entitled to parity with male tribal in inter-state succession? Specifically speaking, the petitioners sought declaration to the effect that sections 7, 8 and 76 of the Chotranagpur tenancy Act, 1908 are ultra vires to articles 14, 15, and 21 of the Constitution of India. **They contended that the customary law operating in Bihar State and other parts of the country excluding tribal women from inheritance of land or property belonging to father, husband, mother and conferment of right to inheritance to the male heirs or lineal descendants being founded solely on sex is discriminatory.**<sup>106</sup> The tribal women toil, share with men equally the daily sweat, troubles and tribulations in agricultural operations and family management. The discrimination against them based on the customary law of inheritance is unconstitutional and unjust, unfair and illegal. Even usufructory rights conferred on a widow or an unmarried daughter become illusory due to diverse pressures brought on her at the behest of lineal descendants. Further, the married or unmarried daughters are excluded from inheritance, if they are subjected to adultery by non-tribals; they are denied of the right to enjoy the property of the father or deceased husband for life. The widow on remarriage is denied of inheritance of property of her former husband. The petitioners had thus elaborated by narrating several incidents in which the women either were forced to give up their claims or became target of violent attacks or murders.

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<sup>106</sup> ibid



in most states expressly prohibits the sale of the lands by the tribals to the non-tribals and also direct restoration or re-compensation by equivalent lands to the tribals in case of violations. Therefore, if the female heirs intend to alienate their lands to non-tribals the Acts could operate as a deterrent. In the event of any need for alienation, by a tribal woman, it would be only subject to the operation of these laws and the first offer should be given to the brothers or attendants. In the event of their refusal or unwillingness, the sale would be made to other tribals. In the event of a disagreement on consideration, the civil Court of original jurisdiction should determine the same which would be binding in the partition. In the event of their un-willingness to purchase the same, subject to the permission of the competent officer, tribal women may sell the land to tribals or non-tribals. Therefore, the apprehension expressed by the State level committee is unfounded in the case of Madhu Kishwar.

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<sup>107</sup> ibid

in respect to women's right to equal share in the property of the household; and secondly, it serves and shall continue to serve as a formidable advocacy tool for equal property rights for women as a key to women's emancipation.

It is said that the tribal folks are tradition-bound and custom-oriented. The members of the community, who through socialization get themselves acquainted with and adhere to the social customs, usages, conventions, folk-ways, mores, norms, ethos, values and ideologies play their roles as actors in the social system not only in defining the social identity of the society to which they belong but also in transmitting them to future generations. In the process of transmission, the customs undergo modification, re-interpretation and adaptation to the changing situation although some customs persists for a longer period. Factors, both endogenous or exogenous, are responsible for effecting such change and in course of time several old customs become obsolete and new ones emerge. **Customary sanctions, therefore, are not rigid but exists in a fluid state and change in adaptation with changing time and circumstances.**<sup>108</sup>

Since no society is static and change is inevitable, the tribal society being simple is no exception to it. During the post-independence period various effective and welfare measures are taken in tribal areas to bring about rapid socio-economic development of the tribal people through adoption of various protective legislation and area specific, community specific as well as family oriented schemes and programs. Due to inroads of modernization, planned development intervention, implementation of multi-sectoral development programs including infrastructural development, economic upliftment, educational advancement, influence of mass media, development of consciousness and awareness, etc of the tribal communities are experiencing change in their socio-cultural life. The modern instruments like education, awareness, development interventions, PESA, provision of joint ownership by both the spouses of land under ST and OTFD Act, 2006, etc. if used effectively may go a long way in effecting the change in the age old customs and traditions relating to male oriented property rights in the patriarchal and patrilineal tribal society.

The study of customary law of any society requires in-depth analysis of the subject from various dimensions starting from the social systems and institutions that governs their way of life. The customary law as applied to the possession, tenure and inheritance of property has links with the customs and traditions of the community and hence without peeping through their customs and traditions comprehending their customary law would be very difficult and far from reality.

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<sup>108</sup> *ibid*

## Chapter -4

# Customary law on land tenure and inheritance of Dongaria Kandha

### Customary law related to settlements

Oral history gathered from elderly Dongarias in Bissamcuttack block indicate that the present day settlers in the Kurli Gram Panchayat of Niyamgiri Hills migrated from Lanjigarh. They used to visit the forests in Niyamgiri hills to gather food and other resources and in course of time settled over there especially in the intermontane regions. But they never moved to the peaks of the mountains, as such places are regarded as the abodes of Niyamraja's kin. It is still a prevailing belief that Niyamraja is the sole protector of the Dongarias. Settlements have been set up only after getting approval of the Lord through rituals.

A settlement is mostly known by the name of the Kuda or clan of the people who settled there first or whose population is dominant. At the initial stage of a settlement usually families belonging to same Kuda inhabited. Later some families from other Kuda also lived in some villages by permission of the original settlers. The members of a Kuda who first discovered Dharani Vali also gives a name to her in accordance with the Kuda name, (for example Wadaka Dharani, Jakesika Dharani etc.). **It is said that Dongaria rights over land, in the past, was decided by the king of Jeypore. A solid ball of earth called Virgamuda was issued by the king to certain Kuda as a token of proof of their right over the land under their possession. In a village the Virgamunda remain in the house of the village head which is hereditarily transferred to next generation. Some people are also of opinion that Virgamunda is only issued in case there appeared any conflict over land ownership.**

The customary boundary of each and every Dongaria settlement and the traditional use zone is having clear landmarks as references. The land area acquired by a village community remained under community possession. After setting settlement communities acquired lands as per their need without encroaching land possessed by communities in other settlements. Hence there was little dispute over land. After bringing the land under community possession share of land was given to households on the basis of able manpower in the household. After distributing lands among households still a huge quantity of land remained under community possession. Additional households, as a result of family fission or who sought refuge in the village, were being provided land from the buffer land that is under community possession.

The customary rights over land in course of time got shaped up when communities in each settlement strictly adhered to their customary boundaries and abided by decisions of the political and religious heads of the village as regards to distribution of lands among households. Despite that there were conflicts over land and village boundary. One would be able to make out the customary rights over possession of land from the following cases.

### Site selection for settlement

When a site is selected for setting a settlement certain conditions such as availability of a gentle slope land for settlement with perennial water source nearby, plain lands for cultivation, and availability of

various forest produces are taken into account. Even after finding everything suitable around, if Dharni vali representing Dharni Penu is not found on the site or closer to the site settlement is not set there. Dharani Penu is represented by three stones usually called Dharani Vali (Dharani stone). Dharani Vali right on the site or closely around the site indicates that it is a habitable place and their forefathers probably lived in that place. So they immediately choose that place suitable for the settlement. Settlements are considered temporary until a Meria sacrifice is conducted there. The dominant clan of the village conducts the Meria and their clan members residing in other villages also join. With this the settlement gets recognized with a clan name. Once the settlement is made the community exercises rights over the available land and forest around.

### **Muthawise distribution of clans and villages**

Originally, the Dongaria villages have been distributed Mutha wise. All the villages in a Mutha are known by the term Kutumbi which means members of one family or consanguines. However, Kutumbi can be further divided into Nayu Kutumbi and Kuda Kutumbi. The Nayu (village) Kutumbi comprises of all the families in the village who belong to different clan groups and therefore, not consanguines whereas Kuda (clan) Kutumbi would mean families of a particular clan and therefore all are consanguines. So Kuda Kutumbi is a part of Nayu Kutumbi. Prominently, the co-operation among all the families belonging to different clans is seen in the Kutumbi Buti which is a sort of co-operative labour.

**Table No.11**

#### **Mutha wise villages in Dongaria Kandha territory**

<b>Block</b>	<b>Mutha</b>	<b>Mutha villages</b>	<b>Total villages</b>
Bissam Cuttack	Wadaka	Khambesi, Kuduveli Padar, Ghartali, Khajuri, Pdiskudi, Karjodi	6
	Jakesika	Kurli, Mundavali, Hutesi, Hundijhali, Tuaguda, Dongar Ranibandha, Gandili	7
	Pusika	Uparguma, Batiguma, Jangjodi, Arisakani, Tebapada	5
	Kadraka	Kadraguma, Radanga, Sagadi, Lavanikhunti	4
	Niska	Niska Bandili, Kirida, Hingabadi, Tenda, Kacharala, Kadiguma	6
Muniguda	Nandruka	Merka Bandili, Shrambi, Tading payo	3
	Kadraka	Damanpanga	1
	Sikaka	Amdhuni, Kucheli, Kota, Janiguda, Duargudi San Denguni, Bada Denguni, Sutanguni, Badbada, Kolerpata, Sakata (Munikhhol GP)	11
	Pusika	Garata, Salpajhola, Gunjapayu	3
	Wadaka	Khambesi – II, Haimandi, Jarpa	
	Hundika	Batudi, Srekapadi, Kesarpadi (Sibapadar GP)	3
Kalyansingpur	Piska	Upar Musadi, Tala Musadi, (Sunakhunti GP)	2
	Huika	Railima, Litipadi, Gadauli	3
	Kadraka	Kadra Bandili, Panchkadi, Kadrukeri, Sikpadari, Tebapada, Parmali	6
	Sikaka	Paberi, Bangpadi, Tuta, Nirugundi	4
	Niska	Kelatipadar, Sarijhol, Parsali, Kansoru, Chhipchha, Lelingpadar, Mayavali, Chatikona, Sikaguma	9
	Pusika	Lamba, Dangamati, Lekpadar, Dengeleli, San Dengeleli, Tamkasili	6
Lanjigarh	Sikaka	Fuldunguri, Tadijhol, Kinakdau (Sibarampur GP)	3

Ethno-historical accounts on villages best describe the customary law relating ownership over villages by particular clans by originally settling there or taking over a site by other reasons. Below is presented settlement history of some Dongaria villages in Bissamcuttack block that presents the conditions through which clans exercised their ownership on settlements and lands.

**Khambesi village:** According to their oral history, people from Pusika clan were the first settlers of Khambesi. The Pusika left the place for some reason. Subsequently the Wadakas migrated from Lanjigarh and settled in Khambesi. The Wadakas did not know that Pusikas were living there but seeing the established Dharni they were convinced that the place was inhabited. In course of time they came across Pusikas and the Wadakas sought their permission to dwell in Khambesi. The Pusikas permitted Wadakas to stay over there with the condition that Wadakas would not claim ownership or rights over the land. The Pusikas reserved the rights to take over the area if they wished to come back. They also reserved their right over the cultivable lands and swiddens. The Pusikas left the place and stayed in Gotalpadar under Gunupur sub-division. About 70 years ago the Pusikas from Gotalpadar wanted to return to Khambesi and claimed their rights back over land and swiddens. The Wadakas did not submit for lack of any evidence that the Pusikas ever owned the lands there. This resulted in a feud between the two clans and the Wadakas drove the Pusikas away. The land of Pusikas is now under peaceful physical possession of present inhabitants of Khambesi village. According to some, the Pusikas were heavily indebted and hence left the area to the Wadakas.

**Kurli village:** Majority of the inhabitants of village Kurli belong to Jakesika Kuda. The Wadakas claim to be the first settlers in Kurli and regard the space as Wadaka Dharani. About 60 years ago, there was a serious conflict between Wadakas and Jakesikas over land rights on the village. The Wadakas claimed the lands of the village Kurli, Munduvali Padar (a hamlet of Kurli) as their Kuda Dharani. This was heavily opposed by the Jakesikas. After several meetings among elders of both sides the feud was not resolved and the matter was taken to Court in Rayagada. Two revenue officers were sent to resolve the conflict. A stream bisected the disputed land. The officers, taking the stream as the demarcating line recorded the land on right side of the stream as of Jakesika and the land to the left of the stream as of Wadaka. The Wadakas were not happy with the decision as the measure of land given to them was not enough. The dispute continued and there were some bloodshed events in early seventies. The bloodshed conflict is the biggest ever conflict over land in the area. At present, the Jakesika people live in villages named as Kurli, Munduvali, Thuaguda, Hutesi, Hundiijhali, Gandili and Donger Ranibandha. All these villages together constitute one Mutha.

**Munduvali village:** In Munduvali the Jakesika Kuda is dominant clan. The village is said to be only 55-60 years old. The original settlers in the village descended from Bamanadeu Dongar and stayed there. The village was initially settled by Pushika Kuda. When they left the place the Jakesikas took over. According to another description, even before the Pusikas the area was inhabited by the Kumbrika clan. The Kumbrika clan killed an animal fostered by Nebaraja (Niyam Raja). Angry Nebaraja wanted to kill all Kumbrikas. Out of fear they left the place and changed their Kuda name from Kumbrika to Mandika to get rid of Nebaraja. Thus the Kumbrikas lost their identity and with that lost their right over the settlement. As they could not claim the lands, they abandoned the settlement and settled near Chatikona.

**Hutesi village:** Hutesi is predominantly occupied by members of Jakesika Kuda. The village was initially a part of Mundavali. It is said that Kumbrikas left the place except an old lady. The old lady

became owner of all landed property of Kumbrikas. The area was frequently visited by tigers. Once when a tiger was about to hunt down the old lady, one Mena Jani belonging to Jakesika Kuda killed the tiger. Pleased by the bravery of Mena Jani, the old lady gave him all the landed property. Since then the village is inhabited by Jakesika kuda.

### **Changing of village site**

**Kadraguma:** The village is named after the Kadraka Kuda who constitutes the major population in the village. The old name of the settlement was Ladari Padar. Long ago there was an epidemic that claimed many lives. However, the incidences could not perturb the Kadrakas except that they moved the settlement to another site closer by and named it Kadraguma. Despite shifting the settlement the Kadrakas still go to the old settlement where their Dharni is established to observe rituals. When the old settlement was abandoned, some families of Kadraka Kuda moved to another place that is now known as Ghartuli village. Although Ghartuli was later taken over by Wadakas the Kadrakas still claim Ghartuli as theirs.

**Karjodi:** Karjodi is a small habitation once inhabited by 10-12 Wadaka families that was abandoned about four decades ago. It is a place set on hills and mountains where wild carnivores were frequenting and causing harm to people and their livestock. When situation worsened, the families shifted to other villages belonging to the Wadaka Mutha. Some families stayed in Khambesi, some in Ghartuli and some in Khajuri where the mutha members gave them space to construct houses and land for cultivation. Now the people who left Karjodi are once again planning to return to their old settlement as their lands there are not taken over by others.

Sahoo (2007) describes that the land belonging to a clan is known as *Padar*. The clansmen always own the land and they can lease out it to anybody for cultivation. Hence, the ownership rights are never transferred. If a man is issueless his land goes to his lineage brothers. Thus, the sub-clan or the clan, according to the situation exercises supreme rights of possession over land. The clan has not only the rights of ownership over the clan territory but also authority to use its natural resources. The traditional land owner reserves the right of taking back his land whenever he wishes. The land like pasture, forest, dancing ground, community center, youth dormitory, streams, and shrines are used freely by every individual of the community. The stream bed lands used by the Dongaria Kandhas are strictly prohibited to the Dombs.

The Dongaria Kandha follows prescribed rules for selecting the place of residence. Soon after marriage, the young man constructs his own house with the help of family members and kinsfolk. Mostly he constructs his house in father's village. Sometimes he moves to other village to establish a new residence. There are cases that husband and wife after marriage moves to bride's parental village with the approval of parents-in-law and the village elders. A family may move to a village inhabited by other clans provided members of the host clan agree to accommodate them. By and large, rules of residence are strictly followed and any deviation leads to quarrels and conflicts between families, lineages and clans. Migration of members from a clan from an old village to a new one may take place, but at the time of buffalo sacrifice festival, sacrificial blood is offered to the deities in both villages<sup>109</sup>.

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<sup>109</sup> Sahoo, A.C: Life and Culture of the Dongaria Kandhas in Adivasi, Vol-47, Number 1 & 2, December , 2007 pp-100

## Administration of justice

Usually the Punjas of the main clan form the core body of the village council or political organisation. There are four main Punjas - Jani, Pujari, Mandala and Bisimajhi. These four Punjas are given specific responsibilities in the socioal, religious and political organisations of Dongaria Kandha society.

**Jani Punja:** It is the priest group and from this group one is selected as the religious head or priest of the village. Besides the religious roles the Priest or Jani has also considerable influence on the political organisation, mainly because in most of the political decisions, the major factors emerge as the dissatisfaction of the deities and nobody else other than the Jani is specialised to deal with such matters. However, the post of the Jani is hereditary and practically he is considered as the sacred and secular head of the village.

**Pujari Punja:** It is also a priest group. The person who is selected as Pujari of the village performs all sorts of rituals services and cook in ritual and ceremonial occasions. He mostly assists the Jani in ritual performances and is respected in the same way as Jani. The post of the Pujari is also hereditary<sup>110</sup>.

**Mandal Punja:** One among the Mandal Punja is selected as the village Mandal and among the Mandals of the Mutha vilages one Mandal is selected political headman of the Mutha. Thus, the Mandal is the political head and maintains political organisation at the Mutha level. But at the village level, the Mandal is having little or no responsibility.

**Bisimajhi Punja:** One person of this group is selected as Bisimajhi of the village. He holds a hereditary post and is assistant to both Jani and Mandal in the village and Mutha level political affairs. Bisimajhi's assistant is Barika - the village messenger, who belongs to the Domb community.

**Barika:** Though the post of Barika is never treated as a part of the traditional core body of the village council, his service as a messenger is quite essential. He is exclusively selected from the Domb community of the village. In case, no Domb inhabits a Dongaria village, some one from the nearby village is appointed for the purpose. His selection, appointment and dismissal are all controlled by the village council. As per the order of the village council he carries messages to all the villagers. He informs the members of the village council about the meeting. Starting from the dispute-resolutions to Meria festival in all socio-religious occasions, he carries the orders of the village council and informs everybody in the village and outside. Besides this, he also mediates between the Dongarias and outsiders mostly in case of economic transactions. In all village-level organisations he also helps the village leaders in collecting the necessary fund from the villagers<sup>111</sup>.

The Dongaria Kandha political organisation operates in two different levels, i.e. the village-level and the Mutha-level. At the village level, the Jani (the priest) performs his duty as the sacred as well as the secular head. The authority of the Jani is restricted to the village. His administration is assisted by the Bisimajhi and the Barika. At the village level, they decide matters relating to marriage, property dispute, divorce, incests, co-operative labour organisation, inter-personal conflicts and other intra-village affairs. Together with other senior members, he also decides and finally selects the forest to be slashed for swiddening and the shifting of settlements to a new site as per the necessity.

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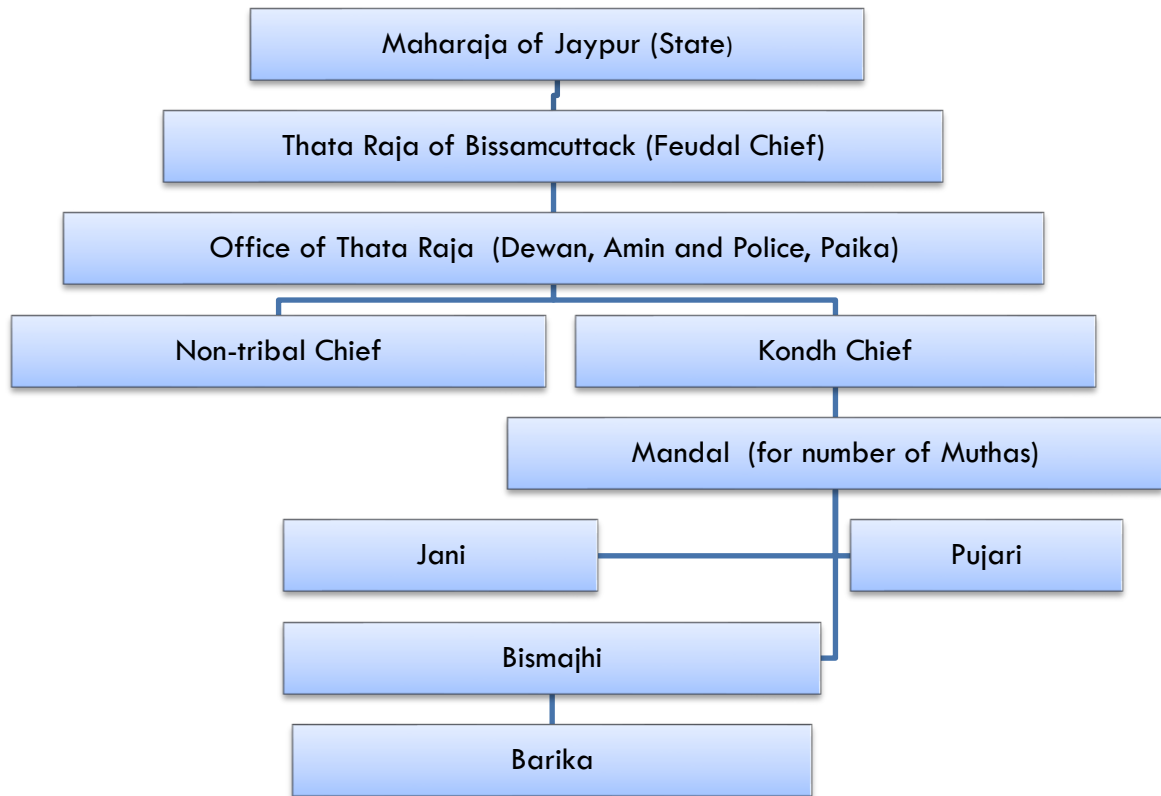
<sup>110</sup> Rath, J.P. (1992) under the guidance of J. Dash, unpublished M.A. Dissertation, pp 167

<sup>111</sup> Ibid pp 173-75

As far as the inter-village matters are concerned, the Mandala takes the overall charge of decision - making. His role can be understood from the term “Mutha Mandala” ascribed to him. Big disputes at the clan level, inter-ethnic conflicts, inter-village political matter, are decided at Mutha Mandal’s court.

**Traditional political organisation of Dongaria Kandhas**

Flow Chart -1: Hierarchy of leadership in Dongaria socio-political system



Source : J.P. Rath (1992 :177) unpublished M.A. Dissertation

Despite of the universality of Panchayatiraj system, the traditional political organization is still ruling the Dongaria Kandhas. Most of the decisions taken by traditional council are followed by the Panchayat.

**Land and their classification by Dongaria Kandha**

Land use wise Dongarias classify four types of cultivated land, namely - neta, panga, merang and bada. They denominate the former three types in accordance with the topography, subsistence crops and cash crops. Lands on the hill slopes where only shifting cultivation is done are called neta. The foothill lands where certain cash crops are cultivated with other crops are called gudia in colloquial Odia and panga (the foothill) in Kuvi. The paddy fields which are located even at a lower level than the foothills are called merang. The last type of land includes specifically kitchen gardens, called bada. The fruit orchards are also called bada. The merang type of land is not available in the Dongaria Kandha territory in the Niyamgiri hills. They purchase such lands from people in the plains area outside their ancestral domain.

On the hill slope, the Dongaria cultivate a particular selection of crops. The bushy forest covering the upper part of the hill is usually not slashed. Cultivation by slash and burn method is done on low hills or



hillocks. In the middle of hill seasonal crops such as cereals, pulses, vegetables and oilseed are grown and on the upper middle part perennial fruit bearing species such as mango, jackfruit and banana are cultivated. On the foothills particularly rabi crops and oil seeds are cultivated. Paddy is cultivated on the foothill plains. Occasionally, the penda is leveled out so as to extend paddy cultivation on the panga.

Swiddens are demarcated on parts of a hill or sometimes covering the entire hill except its top. Some plots on the slopes are allotted longitudinally while others run transversely along the circumference of the hill. The longitudinal sections of swiddens are known as nellu pati while the transverse sections are called nellu padi. Both types of plots are defined according to the traditional system of agricultural land distribution. The pati type of plot is important as it covers ecologically different sections of a hill. In the distant past, the cultivated part of a hill was divided to padi plots, but after observing that a pati plot yielded a greater variety of crops, the Dongaria began to favour the pati method for dividing a hill. The ecological implications of each type of plot, as well as soil type, vegetation and suitability of crops can be better understood from the Dongaria swiddening practices.

### **Land ownership pattern**

According to the original distribution system, a hill was divided on the basis of various punja (title or functional group of a clan) in a given village. These plots were later further sub-divided to meet the needs of the subsequent generations, an undertaking that was rather uncomplicated if pati was the method of choice. By constructing sentinel huts on the hill slopes it is easier to guard the longitudinal plots, but the transverse plots thereby remain rather neglected. The Dongaria Kandha are convinced, however, that transverse plots are more suitable for horticulture, but not for swiddening.

The Dongaria Kandha inherits land through patrilineal descent line and women have no right over the land and property. When a man dies all his property is shared by his sons. The selling of land or trees by pledging is called *jerat*. No document is signed. After the transaction the original owner cannot claim ownership of the property again. The seller takes an oath before the Earth Goddess and loudly tells that *I will melt like salt in water, my body will be rotten like the straw, my life will vanish like the ashes go away in the wind, I will die fast like the grass and evaporate like drop of wine, if I claim it again.*

The community's right over a forest is exercised on the basis of the village it belonged to, with the inhabitants of a given settlement assuming they had a legitimate claim to the surrounding forests. Forest lands and hill slopes were first distributed among clans, then among punjas and then among families. However, some patches of land were kept as buffer land to be distributed to new families who may come from outside, irrespective of their clan membership. Subsequently, the land fell to individuals as a result of hereditary rights or by legacy. An increase in the population inevitably meant that such plots of land were further fragmented into even smaller pieces.

### **Customary Law relating property inheritance and land tenure systems**

At the time the Dongaria Kandha settled in the Niyamgiri hilla ranges, they divided the land into areas for settlement construction, swidden plots and plain lands. The distribution was done according to Mutha and clan, and is called *basa bati* (area distribution). In those days, classification such as habitable space or agricultural lands had not been valid. In the course of time, the people cleared forest patches in order to cultivate the land. The hill areas were converted into swiddens which were

later distributed among the households residing in nearby settlements. This is called *neta bati* (swidden distribution). Thus *basa bati* came to define the distribution of surrounding land irrespective of the type it represented, while *neta bati* refers specifically to the distribution of swidden plots<sup>112</sup>.

Each village in the Dongaria habitat is located at the foot of a hill and named after an important hill. The site of a village, for instance, is determined in relation to its distance from the adjacent hill. The following account describes the territory covered by various Dongaria villages.

Viewed from the side of Kasimpau hill that faces the Dongaria village Khambesi, the total land area is owned by Wadaka *mutha*, while the opposite side of the hill belongs to the Jakesika *mutha*.

The continuation of hill streams converging on the borders of the Kurli village has been named *handijadi*. The area belonging to the Wadaka *mutha* begins at the upper part of *handijadi* and stretches till it meets another stream called *bankala jadi*. The upper area of the Dunudananga and *Bankala jadi* streams, as well as the lower part of the *Handijadi* belongs to Jakesika *mutha*.

The inner side (facing the Jakesika villages) of Kasimpau hill, Batigari hill, Hingavali hills and Nebahoru hills are owned by Jakesika *mutha*. These hills encircle the Jakesika villages Kurli, Munduvali, Hundijsali, Hutesi, and Thuaguda. The area surrounded by Nebahoru hill, Gandipayu hill, and Donari hill belongs to Sikaka *mutha*. On the Batigari hill plateau stands a jackfruit tree. The side of the tree facing the village Niska Bandili belongs to Niska *mutha*. The Gandipayu hill, the Duargudi hills, and the Batigari hill encircle the area owned by the Niska *mutha*. The area from one side of Tedavali hill facing the Kadraka villages upto the Nakti hill belongs to Kadraka *mutha*. From the Narengbadi hill till Balkametpa hill near village Jangjodi, the area belongs to Pushika *mutha*.

There are different patterns of land distribution. There can be village-wise distribution, clan-wise distribution and *punja*-(title group) wise distribution of lands. Villages are found with exclusively one clan or with one dominant clan. In a village-wise distribution there is always a boundary between two villages. Keeping the boundary in view, hills are distributed among respective village communities. People of a single clan or different clans residing in a village can occupy a hill land, convert it to swidden plots and impose their right on such lands. Till about seven decades ago, different families in a village converted hill lands to swiddens without any restriction. They utilized their family labour for this conversion. According to the number of able members in a family, different families acquired required areas of land.

In case the number of families increased along with the need of more land, further grant of land is made possible through the village level decision-making body where *jani* and *mandal* allot the required land on lease if at all available in the nearby forest. In case of non-availability, the decision-making body along with the person in need search for available forest slopes in the distant hills if they are not possessed by any other village. Though this creates some inconvenience of covering a long distance to cultivate the land, there is no other way out for the village leaders.

First hill slopes on a hill are chosen on the basis of its suitability for cultivation. The number of plots on a hill corresponds to the requirement of individual families in a village. Plots along the slope offer scope for cultivating variety of crops while a plot across the slope limits the cropping to certain varieties only.

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<sup>112</sup> Jena, M.K, Pathi, P, et.al.2002: Forest Tribes of Orissa, Vol. I The Dongaria Kandha, DK printworld, New Delhi

Communal property like forests is known as *kutumb biti*. Individually-owned resources or property is termed *na biti* (my property). The forest is considered, first and foremost, as a source of land and water, with trees and wildlife having secondary importance. Traditionally, land, water, vegetation and wildlife were considered as a basic whole. While forest resources cover the range of natural, physical characteristics, individual resources entail labour capacity, inherited land and the economy. Properties owned by the community are at the disposal of all its members. The community may grant rights and impose restrictions to regulate the exploitation of this property, which includes all timber, fruit and sap producing trees in the forest. Individual rights cannot be claimed to such resources.

### **Property Inheritance Pattern**

In early days it was full of forests all around. Whoever could clear whatever area there was no restriction. It all depended on the number of able working hands in the family. The forest clearing was required for cultivation, especially for multiculture under shifting cultivation system. In this tedious task women used to be chief input of labour. For that many Dongaria men preferred to have more than one wife. There were wild mangoes, wild orange and banana in the forests around. Those trees were never felled and as such the tree ownership goes to the owner of the plot. The Dongarias used to cultivate a patch of land consecutively for four years and after that they were leaving the land under fallow and moving to the adjacent patch for clearing and subsequently for cultivation.

**On the occasion of birth of a son, the father was taking initiative to prepare a new plot by slashing the wild vegetation.** This they were doing keeping in mind that a son born meant addition of a family. Hence, in order to have adequate landed property for sons the Dongarias were clearing new patches. A person was at liberty to convert forest lands into swiddens in consideration of one plot for one son. **The sons fathered by a Dongaria irrespective of whether from the first wife or co-wives were getting equal share of land by rule of inheritance.** If suitable forest patches were not available nearby then the father had no option but to share his own possession among the sons following traditional rules of inheritance.

For example, if a person has five sons then he will have to make five equal shares of the acquired land and inherits one share each to the sons. The sons in later times may also clear more forest patches and bring them under their possession. At the old age of the parents all the sons try to take care of him. Any son who lives with the father at his old age may get his father's house but cannot claim any extra landed property as compared to the other sons. If the father is still able to do work at his old age then whatever new resources could have been generated goes to the son living with him and taking care of him.

If a conflict happens between father and one of his sons or his only son and if the son leaves the house and goes elsewhere then in such case the father's property is distributed equally among all sons including the one who left the village and the sons who live in the same village. The son who left home may not demand any share from father's property, but his entitlement on father's property remains secured. The land remains under his proprietary rights for ever. His brothers may use the property for share cropping or they may cultivate the land taking opportunity of the absence of the landlord but under no case the property ownership can go to other brothers.

If in case a son leaves his father's home out of anger or for any dispute between father and son then he usually goes to the house of his maternal uncle or to the parental village of his wife. Being there he

may prepare plots for cultivation provided that there is adequate forest land for converting to swiddens. Otherwise he may get a share of land from the possession of his father-in-law, provided that the father-in-law willfully offers some land. The son-in-law has no rights to demand share from father-in-law's property. Again, if forest land is available which may be converted to swidden then also one cannot do it at his free will. The land should be falling within the boundary and jurisdiction of the village, and the village council should have permitted the person to convert the land to swidden. The same conditions also apply if a person who left his own village lives with the maternal uncle.

If a son left his father's home and village and lived in his maternal uncle or father-in-law's village and during the course of his stay there he could mobilize some landed property and brought it to his possession and in the meanwhile decided to come back to his parents then in such case whatever landed property he had mobilized in the other village would become the property of the maternal uncle or father-in-law in the other village with whom he had lived. If the property mobilized there was got from the village council then after he left that village the property would go back to village council. It may be noted here that **every village has a pool of land at their discretion and disposal. If a stranger or relative wants to live in the village and approaches the village council for some land then the village council may provide him some land from the pool land.**

Whether a son doesn't like to live with father, or if the son left the village for some other opportunity, or if the son left the village because of intra-family or inter-family or intra-village dispute, or whatever such case it could be, **under no circumstance a son can be denied his share from father's property.**

**Under no circumstance, if a son leaves his village or lives separately in another village, whether maintaining relationship with father and kin members or not, his share of property cannot be denied or cannot be given to the ownership of any of his brother or to the village council.** In his absence the brothers may cultivate it but cannot exercise ownership. If the land remained fallow and the land owner did not come back to the village or declared that he would not come back then also the brothers cannot become owners by default. Hence, the brothers should be cultivating the land in his absence to later claim it as their property after their brother declared that he may not or would not come back to the village. **If the land was lying fallowed year after year and the land lord did not come back to the village then the brothers cannot claim their ownership on the said property. In such case the property will go to the land pool held by the village council and would be retained with the village council at their discretion.**

**If a person left the village and after a reasonable period he came back to the village then his claim over his land shall be entertained by the village council. However, if he does not return and after many years his son or grandson returns to the village and stake claim over his father's or grandfather's property then the village council may not entertain him or them.** However, the village council may entertain them utilizing its discretionary power in terms of land allocation to the households.

**If the village council is convinced that an absentee landlord may not return to the village and that none of the brothers of the absentee landlord has been cultivating the said land then the village council utilizing its discretionary power on land allocation may give the ownership of the land to any other needy person or family.** However, before allocating the said land to any other the village council first enquires if any relation of the absentee landlord wants to stake a claim on the property. If none of the relation of the absentee landlord came forward to claim the property then the village

council may give it to any other needy person or family with the strict condition that the person must cultivate the given land and should not leave it under fallow. The village council would monitor the land use and at any point the council felt that the land was not being properly utilized then the village council may revert it back and restore it with village council.

## **Case studies on application of customary law on land administration**

### **Ownership by inheritance/ transfer**

#### **Case Study -1: Property ownership by outsider by virtue of marriage**

This is a case story of Rude Wadaka, daughter of Kalang Wadaka of village Khambesi. Rude, during her stay in the girls' dormitory came across Mindru Ataka, a resident of Uparguma village. As per tradition, girls chose mates from among those young men who have access to the girls' dormitory. The girls know well their traditional restrictions as applies in choosing mates. The mate should be from a clan with which marriage is approved socially. Rude knew it well that there is no restriction in marrying Mindru as he belongs to Ataka clan with which marriage relation of Wadaka clan is approved. Mindru used to visit the dormitory in the evening and sleeping beside Rude till early morning. As per tradition a boy from approved clan can sleep beside his prospective partner and maintain modesty while sleeping by her. This is the time when the boy and girl share with each other personal choices and build trust between each other. When Rude and Mindru felt comfortable with each other they started meeting in lonely places and developed physical relation in between them. She didn't attain pregnancy. After living like this for couple of years they decided to live together in village Khambesi. It was just living together without a formal marriage. Her brother Sundara Wadaka gave them a patch of land to cultivate and earn their livelihoods. However, through Rude, Mindru approached the village council and requested them to provide him a patch of land to cultivate. The result was positive. The village council in Khambesi allowed him to cultivate a designated patch of land. Mindru thus became a resident in the village like a Gharjwain<sup>113</sup> although he had not in true sense married Rude. Again, he was not considered Gharjwain as he was living separately with his unwedded wife in an independent house. On the other side when Mindru did not visit his own village and did not claim share from his father's property, his two brothers started cultivating his share of land. After many years the village council of Uparguma realizing that Mindru would not return to his village declared that Mindru's stake over his father's property has been forfeited and the property goes to his two brothers who have been cultivating the property.

The customary law in this regard states that Mindru's son will only be entitled to inherit his father's property in possession in the village Khambesi. Since Mindru's share from his father's property had been forfeited and restored to his two brothers, so Mindru's son cannot claim inheritance of property possessed by his paternal grandfather. In other words, **one who has ignored taking care of his parental property for many years together then his rights over the property would be forfeited and restored to his kin members.** Once such an arrangement has been made the person's sons also loses their rights on grandfather's property.

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<sup>113</sup> When a son-in-law lives with the parents' in law he is called Gharjwain. He is entitled to enjoy usufructory rights on his father in law's property. If the village council accepts him and provides him some land independent of the father in law's possession then he becomes a true resident of the village.

### **Case Study -2: Pattern of land ownership from son-less father**

This is a case study from Uparguma village under Kurli Gram Panchayat. Adi Ataka of Uparguma has two daughters and no sons. The eldest daughter Kambu Ataka fell in love with Lalit Sikaka, son of Samburu Sikaka of the same village. Since they do not belong to the same title group, marriage between them did not face any problem from the village. So Kambu married Lalit and after marriage they started living in an independent house in the same village. The other daughter of Adi, named Basanti married to Saiba Wadaka who belong to village Khambesi. Basanti with her husband and father is living in her parental house. Since Adi is son less there was a big question about who would inherit his property.

Adi, in order to avoid any tension in later times between his two daughters over ownership of his property distributed his landed property between his two daughters in equal halves. Since Basanti is living with him and taking care of him it is expected that Basanti may retain the house of her father. As per their customary rule, Saiba and Basanti can continue to cultivate their share of land and subsist on that along with taking care of their parents as long as their parents lived. The condition that applies to Saiba and Basanti is that they cannot be considered owners of the land they have been cultivating as long as Adi and his wife are alive.

Lalit belongs to the same village and hence is at advantage of cultivating his share of land from his father and Kambu's share of land from her father. However, Saiba who has come from a different village is only concentrating on the share of land that he has been provisioned by his father-in-law. In Khambesi, Saiba's share of paternal landed property is being cultivated by his brothers. Saiba is giving no attention to his part of inherited property and as such is raising no objection to his brothers cultivating his share of inherited property.

As per the customary law of the Dongaria Kandha, Kambu and Basanti along with their respective families can have physical possession over the land of Adi as long as they continue to live in the same village. In later times their children can also hold the rights over the properties. If Saiba returns back to his own village Khambesi then also he can hold the share of land got from his father-in-law along with the share of land he has inherited from his father in village Khambesi.

Hence, the customary law may be comprehended that in case of a person having no sons but daughters only then his landed properties can be shared equally among the daughters. The daughters with their respective families can continue to be in possession over the lands as long as they continue to live in the village. If any daughter expresses her unwillingness to live in her father's village then her share of land may also be equally divided among other daughters who continue to live in the village. If the daughter continues to live in the village and her husband can manage looking after properties at his parental village and the same in the village of his parents-in-law then he can possess both the properties. In this connection what is important that the daughters should have maintained clan exogamy in their marriages.

### **Case Study -3: Share of property to daughter in special cases**

Hapuru Kadraka, son of Dambinga Kadraka of Parsali village under Kalyansinghpur Block married by choice to a girl from village Mundavali under Kurli Gram Panchayat. The girl was living in village Kadraka Bandili in the house of her maternal uncle when the marriage negotiations were initiated.

After the marriage she did not like to move to Parsali – the place of her parents-in-law. She rather persuaded her husband to live with her in village Mundavali. The girl's parental house was very small to accommodate the newly married couple, so they approached the village council in Mundavali to give them a patch of land to set up a dwelling for them. The village council granted their request and thus the couple continued living in the village in their independent house.

In this case, the customary law rules that a girl may live with her parents after marriage if she does not want to go to the house of her parents-in-law. Her husband may live in both the places i.e. in his parental village and also in the village of his parents-in-law. **However, by virtue of marriage the girl can have all rights over the share of land due to her husband by inheritance in the village of her parents-in-law. On the other hand, she may or may not get share of land from her own father.** If her father has adequate land then he may give a small share of land to his daughter after giving due share to the son. If the father has small holding then she may not get any share from it. The extent of land under possession of her father matters in this context. Further, because she is living with her father and contributing her labour for cultivation of her father's land then she will have legitimate share from the agricultural harvests from the said land. However, she will have to live in an independent house with her husband and family as the ownership of the parental house would go to her brother.

### **Land allocation to relative/stranger/refugee**

#### **Case Study – 4: Settling in wife's village**

Sikaka Kalabatu is an original resident of village Odapanga near Muniguda. For some reason he left his parental village and went to Amdhuni village which is the parental village of his wife. He lived in the house of his parents-in-law and felt comfortable with the villagers of Amdhuni. After living there for a year he felt that the village is ideal for him and he urged to live in the village permanently. He approached the village council and expressed his desire to live in the village permanently and based on that he requested the village council to provide him a patch of land to cultivate and earn his livelihoods. In course of time he became father of two sons. The sons inherited his property that was created by their father in Amdhuni village. For his long absence in Odapanga village, the village council enquired his whereabouts and got to know that Kalabatu had settled permanently in village Amdhuni. Since, neither he nor his sons ever came to Odapanga to claim their parental land they lost their ownership over the property in Odapanga. Had his sons, at least, occasionally visited Odapanga and continued cultivation on the said land then they could have retained their ownership over the land. The village council gave the swidden of Kalabatu to the household who has been cultivating the adjacent swidden. If the said person to whom the land has been allocated keeps the land under fallow then the village council may take it back and give it to some other person to cultivate.

The customary law provides that the swiddens are part of the common pool resources of the community residing nearby. **Subject to the approval of the village council the forests are cleared and the swiddens are distributed by the village council to the needy households. Any family having possessed a swidden must cultivate it regularly. If the land is not cultivated regularly then the village council may take over the land to its disposal. Further, an absentee landlord may retain the ownership over the land as long as he arranges for cultivation of the land by share croppers or by kin members. If the absentee landlord does not come back or if his sons do not claim the land, and if the land remained uncultivated for pretty long time then the village council has all rights to take**

**over the possession of the land and subsequently may allocate the land to some other needy family. Land should, under no circumstances, remain uncultivated or fallowed and one's ownership ceases when a land is fallowed for long interval of time.**

#### **Case Study -5: Property ownership by women and later restoration of the property to village**

It is a classic case of multiple implications of Dongaria Kandha customary law relating to land ownership. Pule Wadaka, daughter of Ranga Wadaka of village Khambesi was in love with Mandala Kadraka of Kuduveli Padar under Kurli Gram Panchayat limits. Ranga Wadaka died in the meanwhile leaving behind his daughter Pule and a son Pradeep. Pule, staying in relationship with Mandala became pregnant. When it came to the knowledge of Mandala, he tried to escape from the relationship otherwise that would compel him to marry Pule. Getting a suitable opportunity Mandala escaped from the scene and left for Kerala. By the time Mandala left for Kerala Pule was at advanced stage of pregnancy and it was clinically difficult to terminate the pregnancy. Thus, Pule gave birth to a girl child.

After giving birth to a girl child Pule was face to face with the property ownership issue. When she became a mother she lost her rights over her father's land. Pradeep, her younger brother became the *de-jure* owner of father's property. So Pule had to knock the door of Mandala's family for her share of property. Since Pule did not share with anybody about Mandala is the biological father of the child. Hence the child then was being considered as an illegitimate child. She had to establish that she became pregnant by Mandala. When she disclosed that and produced some proof to her defence, Mandala's family accepted Pule as their daughter-in-law and hence provided access to Mandala's share of land for Pule to cultivate and earn livelihoods for her and her daughter. Mandala had no objection to it. However, Pule found it little difficult to cultivate the land from Mandala's family as it was distantly located. Hence, she requested the village council of Khambesi, her parental village to provide her a patch of land nearby so that she can earn her livelihood. The village council of Khambesi provided her a patch of land. Her brother Pradeep was also facing shortage of labour to cultivate his parental land. So he also requested Pule to contribute labour for cultivation of his father's land and promised her to pay her share. Thus, Pule got access to three different categories of land in terms of ownership and led a good life with her daughter.

In the meanwhile Pule's daughter became 16 years old and Pule looked for a match for her. She got a match for her daughter in the Salapjhola village near Muniguda. Last year Pule gave her daughter in marriage. Now she is living alone in Khambesi in an independent house which she had constructed by cooperation of the villagers.

**The customary law in this kind of situation rules that a woman abandoned by her husband may take shelter with father or brother or maternal uncle or any such consanguineal or affinal kin. However, she cannot demand share of land from any of the people who have provided shelter to her.** In such context she will have to engage herself in land based or otherwise livelihoods opportunities available to her and earn for herself. However, the village council may offer her a swidden out of mercy, in case the family that has provided her shelter is not having enough landed property to cater her needs. However, that depends upon the village council whether to consider her plight or just overlook her plight. In other words she only gets a share for the labour she had put in the production or income pursuits. The customary law further states that if the girl had married to somebody within the



village and later abandoned by husband then considering her pitiable condition the village council may also suo motto provide her a patch of land from the common pool resources.

In certain cases the customary law advocates that **if a woman abandoned by her husband lives in the village of her father but lives separately in an independent house then the father will have to (not a compulsion but by obligation) give her a patch of land to cultivate and earn her livelihoods. But she would never be considered the rightful inheritor of father's property.** She can only enjoy the usufructory rights over the patch of land provided to her by her father. In the above case Pule stayed in the village of her father but lived in an independent house for which her brother Pradeep had to provide her a share of land that he inherited from his father.

**Another clause in their customary law as applies to the above situation spells that if a woman has been abandoned by her husband and later gives birth to a girl child, and provided that the father of the child is known or otherwise the mother has adequate proof in favour of identifying the biological father of the child, then for sake of taking care of the girl child she can demand a share of land from her husband's property and enjoy the usufructory rights till the girl is grown up and given in marriage.** After marriage, both the mother and daughter duo would be made deprived of the share from husband's/father's landed property. This was applied in the case of Pule, and under the provision of this clause she could demand a share of land from Mandala's property which she enjoyed till she sent off her daughter in marriage. Now Pule is exercising no usufructory rights on the share of land she had availed from Mandala's family.

It may be noted here that the girls dormitory system in Dongaria villages has an in built system and institution within to provide shelter to widows, women abandoned by husband, and other such cases provided that the girl/woman originally belongs to that village. Once, somebody is allowed to stay in girls dormitory then a peer pressure starts working in her favour. The peer pressure, in many cases, helps such women in mobilizing some livelihoods earning resource under disposal of the village council. One should not be surprised seeing women at the age of 50 and more have been staying in girls dormitories. One must understand that those women are singles because they didn't marry or because they were rendered destitute because of death of family members, or because she had been abandoned by her husband, or because a formal divorce had rendered her to live as single.

#### **Case Study -6: Living together not by marriage – conditions of inheritance**

Buchi Wadaka, daughter of Laduka Wadaka of Khambesi village was in relation with Nara Praska of Khajuri village. Marriage between Wadaka and Praska is socially approved. Hence there was no obstruction for their marriage. The marriage fixture was done but both the parties could not mobilize required resources for the marriage. Hence, they could not marry each other but also did not part from each other. So, Buchi and Nara started living together in the village Khambesi. They lived separately from the family of Buchi in an independent house. Seeing the development, Buchi's brother Suresh provided a part of his parental property to Buchi and Nara for cultivating and earning their livelihoods. Nara got so occupied in his livelihoods earning pursuits in Khambesi village that he had apparently forgotten his share of parental property in his village Khajuri. Presently, Nara's share of land is being cultivated by his brother and brother's sons. However, Nara's share has not been forfeited yet.

**The customary law on property ownership in such cases provides that if at this point of time Nara goes back to Khajuri then he would have all rights to inherit his father's properties although in his absence his property is being cultivated by his brother and nephews. On the other hand, if he chooses to live in Khambesi, he would have to forego the parental properties in Khajuri. If Nara goes back to Khajuri then he will be deprived from the land that Buchi's brother Suresh had provided to them and the land would automatically revert to Suresh.** Under the circumstance, Nara is in a state transition whether to live in Khambesi or to go back to Khajuri. The advantage in living in Khambesi is that he can approach the village council to be provided with a patch of land so that his living would be easier. In this arrangement he can enjoy the usufructory rights over the land provided by his wife's brother and also can enjoy ownership rights over the land that the village council provided. The calculation of cumulative benefit favours his stay in Khambesi as the share of parental property he is entitled to in Khajuri would be less compared to the total lands under his possession, both under usufructory rights and ownership rights, i.e the total of land provided by his wife's brother and the village council. The children of Nara would also be entitled to the same property in Khambesi.

The customary law in this context provides some flexibility. **It allows a person to choose different options that are customarily available. Accordingly, he can choose what fits him well. The land productivity, the bondage and relationship with villagers factors most while choosing an option.**

#### **Case Study -7: Living together but not by marriage – share cropping rights**

A case in Kurli that occurred five years ago present how two adult partners living together but not by marriage get share from the community land. Minjali Jakesika, daughter of Upa Jakesika of village Kurli fell in love with Pagu Sikaka, son of Kangar Sikaka of village Khajuri. They continued in the relationship for about 5 years. There was no restriction for marriage between them. However, for personal reasons they did not marry ritually but wanted to live together and for that they preferred Kurli to stay in as in Pagu's village there was not adequate land for cultivation and also there was not much space to set up a house to live. Thus, for some days they lived in the house of the wife's parents. However, they were not feeling comfortable to share space in Minjali's parental house. So they wanted to build their own house. This needed the approval of the village head man. They approached the village head man and other elders for a space to construct a house they got approval for it. Subsequently, both husband and wife with some help from the villagers could build their independent house and moved in there.

The issue the couple was confronted with was lack of land to cultivate to maintain their own livelihoods. Before moving into the independent house they had all access to the land held by possession by the wife's father. They were contributing labour in the production pursuits and were surviving on the proceeds as kind of family members of Upa. However, when they moved in to their new house, as per the society's norms they should make independent living, whether by acquiring lands from the village community or by means that is possible on the part of the couple. Upa Jakesika, father of Minjali possesses about 8 acres of swiddens for cultivation. However, he was not able to cultivate all the land. Being a girl child Minjali was never to be considered inheritor of her father's property and on the other hand it was not dignified for her to depend on father's land for ever. Hence, Minjali and her husband discussed with Upa for possibilities of getting some land for share cropping. Upa agreed to it. Thus, Minjali and her husband got access to part of her father's land where they continued share cropping. In

the meanwhile, they got to know that there are patches of community land that has not been given to anyone. So, after some years they again approached the village elders and village head man and requested them to allocate some lands to the couple as they wanted to live permanently in Kurli. The village council allocated them a patch measuring about 2.5 acres. Now they have been cultivating part of the land of her father on share cropping basis along with the patch of land provided by the village council.

The customary law in this context applies that **a daughter has no right of inheritance of father's property. Inheriting the father's property is possible provided that the father has no sons and the daughter married to a person who was willing to live in the village permanently. As long as the daughter lives in the village with her family and children they can have the usufructory rights over the land only. However, one can take the option for requesting the village council to mobilize some lands from the community reserve land.** In this case it was a living together matter so there was the complicity of inheriting or getting usufructory rights over the land. On the other hand, Pagu was not interested to forgo his father's property part of which he could have inherited. Thus, he preferred to take the option of share cropping on his father-in-law's land, mobilize some land from the community, maintain his rights over his father's land as an inheritor and also wanted to live in Kurli so that he could manage all the properties together.

### **Land mortgage, sale and unlawful acquiring**

#### **Case Study -8: Land transaction between Dongaria and Domb**

It is a known fact that the Dongaria Kandha in Niyamgiri area lease out their fruit orchards to the Domb people at a negotiated price. Whoever suffers the loss due to the transactions is a different matter altogether. The Dongarias have grown pine apple, orange, mango, cinnamon and many other fruit bearing and economic trees on their swiddens. Trade transaction happens in between the Dongaria and Domb people on particular items like fruits in the orchard that produces in particular season of the year. For example, a Dongaria may lease out only pine apple from his orchard or all the different kind of fruits in the orchard for a negotiated price. The transactions in shape of leasing out fruits in orchard continue year after year. It is to be noted here that the transaction is strictly limited to the fruits or other items as is grown in the orchard, but not the land.

However, when a land owned by Dongaria is leased out to Domb for a longer period the Domb takes the opportunity to manipulate the crops in the swidden. Considering the land as his own he may add up new crops in the orchard by plantations. In the initial days the Domb may show his humility and seek permission of the Dongaria for altering the land use and share a design to which the Dongaria usually approve of. In a later stage, however, if the fruit tree planted by the Dongaria ceases to produce and the lease is still held by the Domb then the Dongaria do not take larger interest in the orchard. The Domb may in the meanwhile add more resources in the swidden by undertaking productive plantations replacing the old trees then the Dongaria do not charge anything to the Domb considering that he had put in more resources. And, after many years the Dongaria do not take any interest in the land which the Domb considers his own.

Although no trade transactions had happened between the Dongaria and the Domb, considering that the Domb was taking care of the land and in the process has added adequately for enrichment of the

land in terms of productive crops the Dongaria emotionally withdraws himself from claiming the land. This is how the land goes to the hand of the Domb.

**The customary law is flexible in this regard. It states that if a person whether belonging to Dongaria community or otherwise is in continuous physical possession over the land and has been taking care of the land and have been raising resources there then the land may be left to the ownership of the person who is in physical possession.** The Domb community uses this as an opportunity. **This is not considered mortgage or transfer of ownership or land alienation.**

#### **Case Study -9: Land transaction for lease and change in physical possession**

Manda Jakesika of Kurli had leased out his turmeric field to one Late Kamadev Kandhapani of the same village. Kamadev Kandhapani was putting his family labour in digging out turmeric. However, he was also taking additional interest in raising plantations in the plot and also cultivating seasonal crops. For more than 10 years Kamadev was in continuous physical possession over the land by virtue of an oral negotiation for lease. There were no witnesses to the lease. In the meanwhile Kamdev had reclaimed the land for better productivity. So he kept the land under his physical possession. Manda Jakesika never complained about it to the village council. Hence, Kamdev became the *de-facto* owner of the land by virtue of the oral lease transaction between the two parties.

**The customary law in this context provides that if the original land owner gives the land in lease to any other in presence of the village council members and later on a dispute happened between two parties regarding ownership over the land then the village council would be on the side of the legitimate owner.** If the land in question was leased out to people within their community it is easy to solve any dispute. If leased out to a different community then the land may be restored subject to complain raised by authentic land owner. **The Dongarias are comfortable as they know that nobody can avail record of rights in his favour because of stringent revenue Acts of the state. When land alienation is not possible then the community believes that they can restore any land in their favour.**

#### **Case Study -10: Land transaction between Dongaria and Domb**

Many years ago, one Jogendra Khandapani, son of Meta Khandapani belonging to Domb community of village Khambesi took over the land of Jambu Pusika, son of Budara Pusika of village Uparguma by oral agreement towards settlement of accounts on liquor which Jogendra had sold to Jambu. Mutually they agreed to deal of certain amount in lieu of the land and the deal was kept secret from others. After settling the bills on liquor Jogendra owed some money to Jambu which he promised to pay in installments in cash or kind. Thus, Jogendra continued to supply liquor, rice and other necessities to Jambu towards settling the accounts for taking over possession of the land. After some months Jogendra could settle all pending value for the land and explained the accounts to Jambu. Thus Jambu allowed Jogendra to cultivate the land in the capacity of owner. Jogendra has developed the land in the meanwhile and has planted many varieties of horticultural crops in the said land.

The customary law of the Dongaria provides that whether the Domb has physically possessed the land and has spent on inputs for land development and orchard development he can never be the *de-jure* owner of the land. The land alienation law also does not allow that. However, the Dongarias feel proud for their words and thus feel that once they give words they hardly reissue their words. In this

case since Jambu has allowed Jogendra to cultivate the land as owner so the larger Dongaria society takes no notice of it. However, in later days if the children of Jambu would like to get back the said land then the Dongaria society would obviously intervene in the matter. If such situation comes then Jogendra shall have to leave the land to the offsprings of Jambu and Jogendra cannot charge any cost towards that because he had enjoyed the usufructory rights for years together.

The Dongarias also mentioned that in no way Jogendra can have legal ownership over the land; neither under revenue law of the state nor under the Forest Rights Act. While in the first case the law of land alienation would prevent the transfer of ownership, in the later case Jogendra would not be able to produce evidence in his favour to stake ownership over the land.

### **Disowning from property due to incestuous relationship/ marriage outside tribe**

#### **Case Study -11: Expelled from village for incest (Uncle-niece marriage)**

Jakesika Kuru of village Mundavali under Kurli Gram Panchayat was in relationship with his brother's daughter. The relationship between uncle-niece is considered incest in the Dongaria Kandha culture. When the matter came to lime light Kuru was expelled from the village by the village council. However, before expelling him from the village, a discussion had been conducted at the village council level and an unanimous decision was taken to expel him from the village following the traditional process.

On the scheduled day, the uncle and the niece who were in incestuous relationship were led to the boundary of the village. There, they were given sickle, hand hoe, axe, knife, cooking implements and utensils with some provisions and were ritually thrown out of the village boundary. This ritual has a deeper meaning. They bid farewell to the two persons forever and would not entertain them in their society ever after. The food and grains that were given to them was to survive the period on exile, till they are settled elsewhere. However, it becomes difficult for them to find shelter in Dongaria villages as the crime is considered grave in their culture.

The couple moved around in many villages to find shelter. No Dongaria village gave them shelter when they heard that it was a marriage between uncle and niece. After going several places they could find shelter in Jhimiriguda village in which there was no Dongaria household. Usually, to discourage the uncle-niece marriage many villages do not like to shelter a couple who were earlier consanguineal kins. However, if they separate from each other, as two individuals they may get shelter in any village.

In this case, when one is expelled from the village for violating the cultural norms his rights over his parental properties is denied. He is also deprived from any other movable assets and properties. His share of property, which he could have otherwise inherited, goes to his brother or nearest kin.

The customary law in this context provides that **uncle-niece conjugal relationship is very strictly dealt with by the village council. They discourage such endogamous marriage within family. Hence, in such cases the man is to be expelled from the society forever and his rights over assets and properties shall be denied. However, marriage between maternal uncle and niece is acceptable to the community as in that case the marriage is not endogamous to the family and as it is a marriage between affinal kins. Conjugal relationship within the same family is forbidden under any circumstances. There are many other situations under which a man is expelled from the**

**family and the village, for example, in case somebody was involved in a homicide or murder in the village, if a Dongaria girl elopes with or marries a man from Domb community.**

#### **Case Study -12: Expelled from village for incest (Marriage to Domb boy)**

Sam Jakesika lives in village Khajuri under Kurli Gram Panchayat of Bissamcuttack block. His daughter fell in love with the son of Manohar who belongs to Domb community in the same village. On getting suitable opportunity the boy and the girl eloped and left the village. On getting the information the Dongaria village council discussed the matter in their society and decided to expel the girl from the village forever. They would have conducted the ritual as is done to expel somebody from the village by leading the person to the boundary of village and bid farewell there. However, because the couple was untraceable so the villagers just took it for granted that the girl has been expelled out.

After many days the girl with her husband was seen in the area. They went to Chatikona village and stayed in the village after constructing a house on government land. The father of the girl and any other in her parental family are no more in terms with the girl.

The customary law in this connection provides that **once a relationship is considered as incestuous that leads to a marriage, especially in case of a Dongaria girl, she would not be entertained by her parents and society. She cannot get any consideration of her father's property even though she may be the only child of her parents.** As such she will be deprived from any other social and customary relation with the Dongaria Kandha society.

#### **Case Study -13: Disowning from property in case of Pakna Piteru i.e expelled from society**

There are certain conditions in Dongaria culture to expel people from the society when somebody commits a grievous offence. Having conjugal relationship within the family or in the Kutumba or such other incestuous relation is considered kind of grievous offence which is dealt very strongly by the community.

Ami Wadaka, son of Bukulu Wadaka of Khambesi village was living with the family of his paternal uncle in village Khajuri. His paternal uncle has four daughters. Ami, out of infatuation got involved with one of the daughters of his paternal uncle and had established conjugal relation with the girl. Since they are consanguineal kins their relationship was incestuous. They could manage to maintain their relationship secretly for some time but could not maintain it for long. When the villagers came to know about the relationship and evidences could be produced the village council started the process to throw away them from the village and deprive them from any property or assets.

There is a process or kind of ritual followed to declare the incestuous persons as out caste and consequent upon that expelling them from the society. A meeting would be conducted in the village. The persons involved in the incest shall be kept separately from each other. A day would be fixed when to declare them out caste and expel them from the village. The message about it shall be transmitted to all Dongaria villages. On the scheduled day representatives from different villages would come to the host village. Then the persons who committed the incest shall be taken to the customary boundary of the village and a ritual would be conducted at the boundary. In the ritual the priest would speak to god about the incestuous relationship between the man and woman and state that they will be considered out caste and dead for the society thenceforth. A piglet and a fowl shall be sacrificed. The sacrificial animal will be collected from the parents of the boy and girl. Blood of the

sacrificed animals mixed with rice shall be thrown on the heads of the man and woman. The Bejuni would utter 'now onwards you don't belong to this village. We are throwing you away from today. If you try to keep any relation with any of us then you will die'. After that the Bejuni would give the woman's hand in the hand of the man and giving them an earthen pot would push them away. The earthen pot is given to them to cook elsewhere and eat from that. All the representatives from the different villages would conduct a meeting to resolve that none of the village would give space for the incestuous persons to live in their village. After that the man and the woman will be thrown out from boundary of the village. The parents of the man and woman shall be cautioned not to entertain the couple under any circumstance, lest that they will be treated as out castes.

Thus removed from the village the man and woman went to Paberi village under Parsali GP of Kalyansingpur block and started living there. They requested the village council in Paberi to give them some land to set up a house and cultivate. Several years have passed in between. The man has died and his widow is living on the landed property given by the village.

As per their customary law **incestuous relation is never excused. The concerned persons are out casted and they are disowned from parental property and they are under no circumstances brought back to caste.**

#### **Case Study -14: Disowning from property in case of Pakna Piteru i.e expelled from society**

Kuru Jakesika of village Mundavali is a married person. His wife died in young age and since then he was living alone. The daughter of his elder brother was helping him for cooking and other household chores. Kuru developed infatuation towards his niece and in course of time they established conjugal relation between them. When the matter became open they had to suffer punishment of Pakna piteru. They were out casted from the village and were driven away from the village in the same way as was done in case of the previous case study.

Kuru and his niece were driven away from Kurli Panchayat. Now they have been living as husband and wife in Chatikona. As per their customary law they have been disowned from parental property.

#### **Case Study -15: Disowning from property and penalty for marrying in low caste**

This is a very popular case in the entire Dongaria Kandha territory where in the leaders from all Dongaria clusters had to assemble and take decision.

That, Sami Wadaka, daughter of Sam Wadaka of Khajuri established physical relation with a Domb boy named Babula, son of Manohar Garadia. Both the boy and the girl belong to the same village. When the matter came to lime light Manohar's family secretly left the village and became untraceable. They did so out of fear that the Dongarias might harm them even may kill them. The Dongaria considers Domb as low caste and they treat them as untouchables. Under such circumstances when a Dongaria girl eloped with Domb boy it became a much talked about story in the region.

Manohar's family who had left the village reappeared in Chatikona area after several months. By then the Dongaria community had become silent about the matter. However, on seeing Manohar visiting Khajuri the Dongaria became infuriated. Manohar was taken in custody and was kept on house arrest. In the meanwhile the leaders from the entire Dongaria territory i.e. from villages of all four blocks: Bissamcuttack, Muniguda, Kalyansinghpur and Lanjigarh were called for a meeting to decide the course of action on Manohar and his family. The Mandal representatives such as Madan Wadaka

representing Bissamcuttack Mandal, Padra Bismajhi representing Kalyansinghpur Mandal, Bari Pdikaka representing Muniguda Mandal and Jilu Majhi representing Lanjigarh Mandal with other leaders assembled in Khajuri. The matter was discussed in length and breadth. The verdict came that Manohar's family and Sam Wadaka's family blemished the Dongaria society through the act of their son and daughter. Hence, heavy penalty must be imposed on both the families. Along with that the family of Sam Wadaka would be excommunicated till the family conducted purificatory rites to get back to Dongaria society. Manohar's family was levied with a penalty amounting to Rs. 5 lakh and penalty amounting Rs. 1.5 lakh was imposed on Sam Wadaka. After lot of pleading and offers of negotiations by Manohar, the penalty on him was reduced to Rs. 1.5 lakh. Manohar paid that amount and his family left the village forever.

Sam Wadaka also paid Rs. 1.5 lakh. A purificatory ritual was conducted to bring him back to caste spending part of that money. The Beju and Bejuni were invited. Animals for sacrifice were purchased. After the ritual a community feast was organized. Sam Wadaka begged pardon for the act of his daughter from the Dongaria society and then politely invited the Dongaria leaders to have food in his house. After the leaders had meal in Sam's house the excommunication punishment was lifted.

As per their customary law **if Sam Wadaka would not have paid the penalty then he would have remained under punishment of excommunication.** After a reasonable period the family would have been expelled from the village and their rights over property would have gone to the village council.

### **Land pooling/ community distribution of land**

#### **Case Study-16: Having parental land and mobilizing community land in other village**

Daitari Kadraka's grandfather originally belonged to village Katikucha-Kadrabandili of Kalyansinghpur. He moved to village Khambesi after marrying a girl from Khambesi village. Since his father-in-law had no son so he continued staying there (matrilocal residence). He was provided some land by the community for cultivation. So he enjoyed the lands inherited to him from his parents-in-law and the lands allocated to him by the community. His lands in Kadrabandili were left under fallow. In the beginning he was occasionally cultivating there but later could not maintain them. He continued living there and Daitari is his descendant. When Daitari continued to live in Khambesi he has been taken as an inhabitant of Khambesi – the Wadaka dominated village. Daitari is legal heir of land of his parents- in-law in Khambesi as well as that of his great grandfather in Kadrabandili and also land in Kadraguma as he belong to Kadraka clan. In the meanwhile, some Wadaka household is cultivating his grandparental land in Kadraguma. Under the purview of customary rights Daitari cannot claim land in Khambesi because it is land originally possessed by and so owned by the village community. For, the community reserves the right to take over the lands of a person who do not have son to inherit it. Whatever land Daitari owns today in Khambesi is land of his parents-in-law and land of the community. Although it has been for more than three generations he is enjoying such lands, yet the customary law would not allow him to place his claim for such land. On the other hand, the family who is cultivating the land of Daitari in Kadraguma should not also place claim for such lands under FRA because it is the land of Kadraka clan. Putting together all choices one thing becomes apparent that **customary law is first to be referred before placing a claim.** Hence, only after due consultation with the clan members of his parents-in-law he would be able to claim for his land.

#### **Case study – 17: Community land to in-migrants**



Golakh Sikaka is an inhabitant of Khambesi village. His grandfather migrated from Pidika village of Kalahandi and by virtue of marriage to a girl in Khambesi he settled there. He inherited the land of his parents-in-law as well as some land given by Wadaka community. Although Golak's family is residing there for past three-four generations, yet he is not considered owner of the land that he is cultivating. He is considered owner of the land as he has got consent of one Druku Wadaka, descendant of the parents-in-law of his grandfather. Here again, the customary law decides the ownership. Had Druku not agreed to Golak's request Golak could not have been considered owner of the land he has been cultivating and that the Wadaka clan council has approved the same.

### **Miscellaneous matters**

#### **Case Study -18: Land dispute over tenure and land alienation**

This is a very old case that happened in Kurli Gram Panchayat long ago. The case illustrates the interface between the Dongaria Kandha customary law and the revenue law of the state. The Dongaria refer it as a case of those times when seeing a Revenue Inspector in village was frightening the Dongaria and the tribesmen were running away into the jungle out of fear.

In the version of the local Dongaria Kandha the case is called *mamatadi* matter. The term *mamatadi* denotes and refers to people from the same community but belonging to different villages and also different clans.

That Kudunja Wadaka, son of Asi Wadaka of Khambesi village was not able to cultivate all his lands possessed by him. He gave a part of his lands to Meta Warlika belonging to village Ghartule to cultivate and earn his livelihoods. Ghartuli is considered a fraternal village of Wadaka clan residing in Khambesi. Meta had very less land in Ghartuli village and he belongs to fraternal clan of Wadaka for which there was no objection from village council of Khambesi on the transactions. Meta continued to cultivate the lands. During the settlement process when the Revenue Inspectors saw Meta physically possessing the said land they prepared the record of rights for the land mentioning Meta as the sole owner. Kudunja did not know about it and after many years when he got to know that the record of rights of his land had gone to the name of Meta he felt little disturbed but did not try to take the land back through official formalities.

In the meanwhile Meta grew old. His sons and daughters were married and living separately. Only Meta and his wife used to stay in their home. Meta used to regularly buy liquor from Domb vendors and was quite addicted to liquor. To settle his bills on liquor he secretly sold away the said land to the Domb liquor vendor. After some months the Domb person started constructing a house on the said land. The Dongaria people who knew that record of rights on the said land belonged to Meta raised question over how the Domb was building house on Dongaria land. When the Domb challenged by the Dongaria members produced evidences that an encroachment case had been filed in his favour and that he became owner of the land by virtue of settlement of the encroachment case in his favour. The Dongaria people challenged the matter in the revenue inspector's office. The records stated that the land had been owned by Meta belonging to ST community and hence it was clear that if record of rights is given to the Domb then that would be a case of land alienation. Hence the revenue inspector's office rejected the appeal for record of rights in favour of the Domb person. Thus the land could be restored to Meta.

The Domb could not sit idle. He connived with Sukru Wadaka, son of Kumti Wadaka of village Khambesi to take over possession of land. For that the Domb insisted Sukru to be the buyer of Meta's land for name sake and after getting the record of rights ready to leave the land to the possession of the Domb. Since Meta had received the difference money towards land after settling the bills on liquor he agreed to sign the gift deed in favour of Sukru. In the gift deed Meta mentioned that since his sons are staying away and not interested in parental land so he wanted to gift it to Sukru. Thus Sukru became the *de-jure* owner of the land. Again there appeared another problem. It was found that the said land is part of a land parcel owned by 13 people who were the family members of Asi Wadaka's father. They objected to the ownership of land by Sukru stating that if Meta so wanted to gift his land he should have gifted it to the 13 members who own the land parcel. Further, Meta was never the original owner of the land rather by mistake during settlement process the land had been registered on the name of Meta. Challenging the ownership of Sukru, the other 13 original land holders have appealed before the court of the sub collector and the matter is still under consideration. The land of Meta which had gone to Sukru by gift deed is physically possessed and utilized by the other 13 original owners of the land parcel. The tahsildar after an enquiry raised objection on Sukru's ownership. In the meanwhile Sukru passed away by an accident.

The Domb person thought that if the property would have been transferred to Sukru then he would have got absolute control over the entire land parcel since the other owners were not aware about their ownership over the land parcel. During the settlement process many land parcels and fragments have been registered under wrong names. However, the Dongaria were never worried about that. However, when they realized that a Domb was trying to become owner over a patch of land within a parcel they did not want that to happen. Thus they raised objection in 2016 which unveiled the fact that there are 13 other people as co-owners of the land parcel.

### **Customary law related to inheritance by adopted son**

There are certain customary laws governing the adoption. In Dongaria society property is inherited to sons. If a father has no sons then his daughters may enjoy usufructory rights as long as they continue to live in the same village or in the parental house. However, a childless couple may adopt a son who could inherit the property after death of the foster parents. In case a childless couple wish to adopt a son then they must choose a male child from within their larger family or clan or community. Their society would not agree to allow adoption of a child from any non-Dongaria community.

In Dongaria society child adoption is of rare occurrence and people do not feel good about it. The father who gives his son in adoption feels ashamed when others pass remark that he was not able to feed his son and manage his requirements. Thus, it is considered a shameful matter. Thus, instead of choosing to adopt a child as inheritor they try other options.

A childless man looks for particular women who have become pregnant but the one who has made her pregnant is not willing to marry her. They also look for abandoned women having child or in pregnancy. Finding such persons the childless man offers to marry the woman and if she agreed then the man gets a wife as well as a child. He may or may not go for more children from the new wife. The deserted or abandoned or otherwise a destitute happily accepts such offers. Such accounts by Dongaria also impress upon the fact that no child can be considered orphan in their society. Adoption, in their society is kind of giving home to a mother and child.

In case, usually, if one married and the wife could not gift a child then one goes for another wife. If in the meanwhile both the co-wives became mothers then the law of inheritance follows equal distribution of father's property among all children in male line.

### **Customary law relating village boundary**

The Dongaria settlements hardly come across inter-village conflicts relating space for settlement. Each village has well defined boundary called Sandhi that is demarcated with culture markers and natural landmarks. No village tries to encroach upon land of any other village's land. Neighbouring villages respect each other's boundary lines and never create situations for disputes of any kind.

There are both uni-clan and multi-clan villages. In villages where there are families belonging to different clans indicate that at somepoint of time the said village was a uni-clan village. However, After marriage some women wanted to live in their parental village with their respective husbands. Thus entered new title groups into villages. Since the marriage law strictly observes clan exogamy so the husband's title becomes different from the title of wife's parents. The multi-clan villages indicate that in such villages many people lived as ghar jawain and thereby the village, in course of time, became multi-clan village.

There is Mutha based customary law that identifies villages owned by particular Mutha. In other wards members of a particular mutha have the liberty of choosing to live in any village from mutha group of villages. Within the mutha villages the mutha members do not need permission from respective village councils to live in there. For example, Wadaka mutha members in Bissam Cuttack block can choose to live in any of the villages from the village names Khambesi, Kudubeli Padar, Ghartali and Khajuri. If in any of the villages there is constraint of space to set new house for any Wadaka household, then the household may move to any of the mutha villages where there is ample space available for setting a house. Similar is about possessing land in any mutha village. A family having very meager land holding may also choose to move into any mutha village where adequate land is available and the host village council feels obliged to provide them land for cultivation as the migrating household belongs to the same mutha. In this way there are specific mutha villages for specific clan or mutha. The following table presents the block wise mutha villages in the Dongaria territory.

### **Migration and property rights**

Scholars<sup>114</sup> have studied that the Dongaria Kandha used to migrate from one area to another and from one village to another inside their hill country and not beyond. as usual when the forest gets depleted and becomes unsuitable for further swidden cultivation, individual households and often groups of them migrate to places where they could get not only better fields for cultivation but better opportunities for exploiting forest resources.

Very often individual households migrate to the villages of their kinsmen. It is the practice among the Dongaria Kandha that the boy has to serve for at least three to four years in his would be father-in-law's house before his marriage. So each year some young men of the village temporarily migrate to affinal clan villages, thus altering the size of the population of the village for a short time.

In several cases it has been noted that individual adults after their marriage leave their parental estate and prefer to start their new establishments away from their villages separately, nearer to their

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<sup>114</sup> Nayak, P.K. Blood, Women and Territory pp 33-35

crop fields, which in course of time grows up into a hamlet. Some may prefer to move to villages of their kinsmen to establish themselves there by clearing new swidden patches and preparing orchards. Very often the sons-in-law move to the father-in-law's villages, to settle themselves there. Migrating to the mother's brother's village or sister's husband's village is also very common. Particularly, in cases where a man is having more than one son and has less cultivable land, some of his sons may move to the villages of such relations who have more land and remain there for a pretty long time by cultivating a portion of the latter's land. But in all these cases the migrant Dongaria Kandhas may stay there in the kinsmen's village for a generation or two, for they have no ownership right over the affinal clan's land and property. In cases where a man has migrated to a village within his clan territory and has ownership right over the land by virtue of his birth in that clan or in the sub-clan which ultimately owns the land; they may stay there for generations together.

Individual destitutes, either Dongaria Kandhas or Desia Kandhas from distant villages, often come and take shelter in the Dongaria villages with the permission of the village headman. In course of time if they get on well with the villagers, they may be allowed to make their own establishments in that village. But they behave as "dependent clansmen".

Quite often the destitutes are adopted as sons (possam mila) by individual Dongaria Kandhas. The adopted son later changes his original clan name and merges with the clan of his adopting father. It is significant to note that once a person of an alien clan is adopted into another clan, marriage alliance will not take place between these two clans, and from that time onwards these two clans would be known to each other as brother clans (tai bhai). After being adopted, the incumbent can have ownership rights over his adopting father's property and thus can live in the alien village as a permanent member.

In this process of adoption and migration today we come across some cases of migration of members of Desia Kandha origin into the heartland of the Dongaria. Consequent upon this, most of the Dongaria Kandha villages which are supposed to have been inhabited by members of a single clan have been inhabited by multi clan members, many of which are of Dongaria Kandha origin and a few of which are of Desia origin.

## Chapter -5

# Customary law on land tenure and inheritance of Paudi Bhuyan

### Customary law related to settlements

The Paudi Bhuyan settlements are located either on the table land at the hill top, and the hill slope or in the valleys surrounded by hills and forests. The blocks of hills around their villages provide land for slash and burn type cultivation. Due to non-availability of plain lands the Paudi Bhuyans have been carrying on shifting cultivation in the nearby hills and forests. As such the village settlements are located on such sites where adequate hill slopes are available for shifting cultivation. Along with the availability of hill slopes, presence of perennial streams nearby is considered a pre-requisite for setting a settlement.

### Distribution of villages among Sardars

It is said that during the Royal rule<sup>115</sup> the King identified Sardars from each Paudi Bhuyan cluster of villages. Each Sardar was asked by the King to state in how many villages the Sardar had control. Accordingly the Royal court distributed the Paudi Bhuyan settlements among a number of Sardars. Each Sardar was supposed to allot land to the Paudi Bhuyans within his jurisdiction and collect cess, tax and contributions from each household in each village under his jurisdiction. The taxes thus collected were being deposited in King's camp court especially on the eve of Dasahara.

### Changing of village site

According to elderly Paudi Bhuyans, in the past they were frequently changing their settlement sites for several reasons and the important among them being that they move to places closer to their agriculture lands or *podu* fields. According to them in the pre-independence period the Paudi Bhuyan villages were distributed among Sardars for purpose of tax collection. The Sardars who had more

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<sup>115</sup> **Excerpts from Report on Lieutenant Colonel T. Dalton's Tour in Bonai and Gangpur during 1863-64:** Bhooya" caste or race is doubtless the earliest settlers, and it was from their hands that the ancestor of the present Rajpoot Rajah first obtained his insignia as chief. The Bamra and Gangpore Rajas are reported to have in the same manner derived their chieftainships from the Bhooya aborigine and when a succession to the Raj takes place in any of these Districts, the acknowledged head of the Bhooya clan goes through a ceremony of making over to the new chief the country and the people.... Under the Swunt Dhunput, or Mahapater, the subordinate officers of the Bhooya militia, all the ablebodied males of the tribe are bound at the requisition of the chief or of the Government, to turn out for service fully armed and equipped. There are no military tenures in the hands of people of any other caste. The Bhooyas thus have great power in the little State. (District Gazetteer, Sundargarh)

**Impact of abolition of Zamindari system:** The former princely States of Gangpur and Bonai constitute the present District of Sundargarh. In these two ex-States there were estate holders who were known by different names, Viz., Zamindar, Jagirdar, Kharposhdar and Pragandar. Besides, commensurate with the feudal order various service tenures were also in vogue which kept in such tenure holder in the State of semi-slavery. With the merger of the feudatory States of Odisha with Odisha province on the 1<sup>st</sup> January, 1984, and the subsequent abolition of all intermediary interest in land the age long feudal rule in the area came to an end and direct contact between the Government and the tenants was established. The abolition of the intermediary system brought in a rational system of land revenue collection and cultivators were assured of their right over the land they cultivated.

number of villages and as such more number of households were able to collect more taxes on behalf of the king. The Sardars had definite geographical territories and they were collecting taxes from the households in villages falling under that territory. There was no shortage of land then. The Sardars were giving free ride to change settlements and also convert forests into *Podu* lands. Aply, the land to man ratio was favourable and the Sardars were using their authorities in allowing the villagers to change settlements for whatever reasons, although the economic pursuits were the most important considerations. At that time what the people needed is a permission from the Sardar to acquire lands for cultivation and setting settlements wherever adequate lands were available to the requirements of the concerned village community. Once the permission was granted by the Sardar, the villagers moved ahead to clear forests for settlement and cultivation. As per requirement of a household the lands for cultivation were being distributed among them. The village chief reserved some lands for further distribution at his discretion. Thus the village represented by the village head became the *de-jure* owner of all cultivable lands as per the Paudi Bhuyan customary law.

Patnaik, et.al<sup>116</sup>. (1980), in their Hand Book on the Paudi Bhuyan have provided a detailed account on frequent changing of village site by the tribe. According to them

- General boredom of living in a particular place for a long time is a major reason for their frequent changing of settlement site. They believe that prolonged stay in one site may not bring prosperity to the villagers and just like wearing new clothes they enjoy to shift their settlement to new sites. However, at present the tribe has very limited scope for changing settlement sites because of scarcity of land enough for a settlement site.
- The Paudi Bhuyan settlements are organized near forests so that the villagers do not have to walk long distance for *Podu* cultivation. When the forests around a village are exhausted they shift their village to another site where they get adequate forest lands in close proximity to practice shifting cultivation. In the current scenario such options have become very limited.
- General calamity in a village such as successive deaths of cattle and human beings, repeated crop failure, breaking out of fire and cholera or any other epidemic in the village, frequent tiger menace and such other reasons force the people to abandon their old settlement and take up a new one. In the current scenario although some such incidents occur occasionally, yet the changing of settlement site is evaded by some other considerations.

The authors also stated that some villages have definite sites to which they shift their village on rotation basis. These sites have different names so that when the village shifts to a new site it is named after the site on which it stands. In absence of such definite sites, steps are taken to select new sites on the following considerations.

There should be perennial water source in close proximity so that the villagers do not face any trouble in fetching water for domestic use. This being the most important and practical consideration, due care is taken to search for the water source before selecting a new site.

Being predominantly shifting cultivators, they tend to select such sites around which lie vast hills and forests at close proximity which can be cleared for cultivation without much strain.

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<sup>116</sup> Patnaik, N. Ali, A. Rout, S.P. Debi, K.B. 1980. Hand Book on the Paudi Bhuyan, THRTI, Bhubaneswar

The last, not the least important factor for selection of a new village site is its favourableness for habitation which is determined by several tests of omen. If it is found inauspicious or ill-omened the place is rejected for another site. It is important to note here that **once one rejects a swidden he cannot claim it further.**

Shifting of settlement site was a frequent phenomenon in olden times when the Paudi Bhuyans were solely shifting cultivators. But at present, they rarely change their settlement site because they have taken to low land permanent cultivation of paddy on foot hills to a great extent. The practice of shifting cultivation has also reduced to a great extent because of restrictions enforced by Forest Department. Adoption of permanent paddy cultivation on the foothills and low lands **has changed the ownership of land from the village to the individual family** and the settlement pattern from shifting to permanent dwelling. **The land survey and settlement in the Paudi Bhuyan area has formalized the individual holdings of property which the settled cultivation initiated.** The homestead lands and the kitchen gardens are recorded in the name of the individual families. Formerly such type of land belonged to the villages as a whole. The change in land tenure system does not give much scope for the villagers to move to new sites unless dire necessity compels them to do so. With the adoption of wet cultivation the pressure on podu cultivation has minimized<sup>117</sup>.

### **Land and their classification by Paudi Bhuyan**

The area where the Paudi Bhuyans have concentrated are patches of rugged hills and mountains intersected by rivers or ravines and by plateaus and wooded plains. Decades ago when the area was unsurveyed the Paudi Bhuyans enjoyed liberty to cut and clear patches of forests to practice *Kamani* cultivation. Village was the land holding unit. Hence, **each Paudi Bhuyan village has a definite area demarcated by boundary lines from the time of feudatory chiefs** and the villagers were free to cut forest and hunt within their territory. **Trespassing in the land of another village leads to quarrels and conflicts which were either decided mutually by both the villages or were brought to the court of law** for trial. Such cases, however, occurred very rarely. And if there were any, it is no more in the memory of present generation. From earlier references, such as by Patnaik, et. al (1980) it is learnt that there had been dispute between two villages Jaldih and Tinto in Keonjhar regarding their village boundary.

Generally certain guiding principles are followed for deciding disputes over land. Each village contributes fowl or goat as decided and a few honest and neutral Bhuyans from neighborhood are invited to act as judges. They all proceed to the disputed land and there each village performs a ritual praying to their gods and goddesses and tether the chickens there. The chickens are then covered with a new earthen pot and mud is plastered around its rim. The chickens are left for one night in this manner and the judges watch overnight so that the chicken of one village does not kill the other. Next morning, the pots are taken out to find out which chicken is dead. It is believed that the village whose chicken died was never the truthful owner of the disputed land. On the other hand, the chicken of the village which is the truthful owner of the land survives. If both the chickens stand the test and survive or otherwise die under the effect of black magic in such cases the disputed land is divided equally between both the villages. On the basis of these methods the judges decide disputes concerning land.

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<sup>117</sup> Ibid. p.25

## Classification of Land

The cultivated land of Paudi Bhuyans have been classified under six types as follows

**a. Biringa**

A patch of forest land brought under cultivation for the first year is called **Biringa**. All the forest lands are owned by the village and every year patches of forests are distributed among individual families for cultivation. During the period of cultivation a piece of land remains under the individual ownership, but after it is left fallow it reverts back to the village. Biri (black gram) is the principal crop grown in Biringa but a variety of other crops such as niger, suture dunka (beans), Kolath (horsegram), moong, pumpkin, gourd, etc are also grown in it.

**b. Jala or Kaman**

A patch of Biringa under second year of cultivation is called *Kaman*. A kind of fast growing paddy is grown in Kaman. Gangei, ragi, maize, ruma are sown on all sides of Kaman to mark the boundary lines.

**c. Guda**

When a patch of Kaman is cultivated for the third year it is then called Guda. After being cultivated consecutively for two years, a patch of Guda generally loses fertility. Hence such crops like short duration paddy, Jali Suan, or niger are usually sown on such plots. After three successive years of cultivation, the land is fallowed for more than five years to regain fertility.

**d. Nala**

In order to grow more crops some Paudi Bhuyan take extra plains to plough open patches of fallow land and grow niger or Kolath. Such plots are called Nala

**e. Bila or Jami**

These are permanent paddy plots reclaimed close to river or stream bed in the valley so that the source of water can be diverted to irrigate these lands. Such lands can be reclaimed up to 3-5° slope and the water from hill streams put to use for irrigating these lands. These lands are individually owned on a permanent basis. Paddy is the only crop grown in these lands.

**f. Bakadi**

Close to the family dwellings and preferably at the back side lie patches of open land owned permanently by individual families. After survey and settlement these plots with the homestead have been measured and record of rights has been issued to individual families. These backyard lands are more fertile because the cow dungs cleaned from cattle sheds are dumped there. Maize and mustard are grown alternatively every year in these lands. A small portion is fenced properly where they grow tobacco, chilli, and some vegetables.

## Land ownership pattern

While some kinds of lands are owned permanently by the individual families, some lands are owned by villages. Some other patches of lands are owned by the villages though individual families exercise ownership over these during the period of cultivation. The characteristic land ownership pattern by the Paudi Bhuyan is presented in the following table.



**Table No. 12****Types of land ownership pattern**

Sl. No.	Bhuyan term	Type of land – English equivalent	Type of ownership
1	Biringa	Swidden under the first year of cultivation	Owned by individual families for a temporary period till it is under cultivation. As soon as the land is left fallow, the ownership reverts back to the village.
2	Kaman	Swidden under cultivation for the second year	Owned by individual families for a temporary period till it is under cultivation. As soon as the land is left fallow, the ownership reverts back to the village.
3	Guda	Swidden under cultivation for the third year	Owned by individual families for a temporary period till it is under cultivation. As soon as the land is left fallow, the ownership reverts back to the village.
4	Nala	Open patches of fallow land taken up for cultivation	Owned by individual families for a temporary period till it is under cultivation. As soon as the land is left fallow, the ownership reverts back to the village.
5	Bila or Jami	Permanent paddy plots converted by individual families	Owned by individual families permanently.
6	Bakadi	Kitchen garden	Owned by individual families permanently.
7	Jhad	Virgin forest (forest or revenue forest)	Owned by the village. Usually, this patch of forest is not brought under cultivation and is kept reserved to provide timber and other house building materials to the villagers.

Every Paudi village has a well demarcated boundary within which there are hills, forests, hill streams and valley lands. The residents of the village may hunt and collect forest produce anywhere within the territory which belongs traditionally to the village. The villagers distribute among themselves according to their requirements of the hill slopes for shifting cultivation. As long as they cultivate a hill slope the land and its produce becomes his undisputed property, but when after two or three years the soil loses its fertility and the swidden allowed to regenerate it also reverts back to the ownership of the village. When after seven to ten years it is again ready for cultivation any one of the village may clear the forest and the previous occupier has no prior rights to its utilization. In the current scenario, however, such rule system is not strictly adhered as the options for rotating swiddens is virtually zero. Hence, people exercise ownership over the land which they have been continuously cultivating.

In the case of the lands situated in the valleys private ownership is recognized. A Paudi who has made a piece of land arable in the valley bottom and has taken to plough cultivation diverts his land to his private use and permanently owns it. However, such individual right in lands which are under settled cultivation does not weaken the solidarity of the village. The main reason is that the wet cultivation in arable lands is a secondary source of livelihood and not all people are privileged to have such lands in their possessions. As against this, shifting cultivation is widespread and universal in the Paudi villages. The common ownership which is associated with land under shifting cultivation serves as the main basis of the village cohesion and continuity.

## **Distribution of land**

Patches of forest land for shifting cultivation are distributed among individual family heads every year after the Magha Punei ritual which is held in the month of January-February. The Naek (secular head of the village) and Dehuri (village priest) go to the spot which is selected for cultivation and allots the plots to individual family heads. The Dehuri cuts a tree with axe or puts some mark on a tree to separate the boundary of one plot from the adjoining one. In course of distribution the Naek and Dehuri are also given land to cultivate.

If the villagers want some land to be cultivated on communal basis to increase the common stock of grains a plot may also be marked for joint cultivation by the villagers. Members from each family go to work in the village plot starting from felling trees and forest clearing to the harvesting of the crops. Both men and women may work jointly and the yield is stored in the village fund to be used for common purposes.

The unmarried boys and girls of a village also cultivate patches of *Kaman* on cooperative basis. The boys take bullocks from their respective families and plough the field, while the girls do such works like hoeing, cutting and clearing bushes, setting fire to the dried trees and bushes, weeding and harvesting. The seeds to be sown in the swidden may be borrowed from somebody or are brought on loan which is paid off after the harvest. The yield is stored in the common fund of the boys and girls to meet the expenses concerning their youth organization.

A patch of forest land cultivated consecutively for a period of three years was being left under fallow for about 10 to 15 years to regain fertility. If suitable patches of forest lands are not available in a village, the village may borrow some land from the neighbouring village for temporary cultivation. In such cases, some of the elders of the village pay a visit to the other village with a few bottles of liquor and beg their permission to allow them to cultivate the land. If they agree, the villagers may cultivate the land for three years and in return give a few measures of grain and some bottles of liquor to the owners of the land as a token of their gratitude.

## **Administration of justice**

The Paudis are subject to the ordinary judicial procedure of the state. Serious crime such as murder, homicide, suicide and theft are dealt with by the local police and judicial courts. But breaches of law of clan exogamy, marriage rules and minor disputes over women and land, are referred to the traditional village council where the cases are adjudicated by the village headman and others. Any sexual relation with an agnate or with a person of the same Khilli is considered a serious offence, and the man and woman guilty of such offences are driven out of the village. They are treated as dead and their family members undergo necessary ritual purification by shaving head, paring nails, cleaning houses and clothes, throwing away earthen cooking vessels, etc. even if the man held guilty begs apology for his guilt and expresses before the village council to break off the incestuous intrigue and is willing to bear the cost of the feasting the entire village, his request is invariably turned down and he is not excused. The belief among the Paudis is that any lenity shown towards the wrong doers for such offences causes displeasure of the Earth mother and other deities who bring misery and misfortune not only upon the culprits but also to the village. According to the Paudi Bhuyans the offences such as incest between agnates are held to be of particular gravity and are not pardonable. The only way of averting the supernatural sanctions from the offender's kinsmen and his co-villagers is to sever all

contacts by driving the guilty persons away from the village for good. The idea of taking such a serious step is largely for self-preservation. But the practice of ostracism serves as a punishment to the offenders as well as a safety device for their agnates and the village community.

Causes of adultery are generally an inter village affair and the offender is brought to justice by the joint council of elders of concerned villages. At the meeting of the council the two headmen in conjunction with the older men of the two villages discuss the case and in most cases the abductor is ordered to pay a fine in money which is given to the aggrieved husband towards a token refund of his bride-price and marriage expenses. The offender also gives a goat and some rice which are used in a feast for the assembled peoples of both the concerned villages. Generally, cases of adultery and abduction are of rare occurrence and therefore the social sanctions by which such cases are handled do not conform to any set pattern.

Certain codes of conduct and social customs of Paudis consciously guard their distinctiveness as a community separate from other communities. Any action which infringes the integrity and prestige of the tribe is severely dealt with. For example, if an unmarried girl is suspected to have sexual relationship with any outsider, she is immediately ex-communicated. Such an offence is considered not so serious as the clan incest is and therefore she can be readmitted into their society provided she pays a fine which is charged on her by the village council and bear the cost of the feast of explanation.

When a man returns home after undergoing imprisonment he is kept secluded in a separate hut until he is made ritually clean. The Paudis believe that confinement in a jail is defiling and any person who is imprisoned is ritually polluted. He is readmitted in the society by bearing cost of a feast for villagers and undergoing the purificatory rites. The other conditions that causes an excommunication punishment are : person having worms in wound is excommunicated and returns back to the caste after the wound is healed and rituals for purification are conducted, and feast to the village is given.

### **Sub-sections of the Bhuyan Tribe**

The different sections of the Bhuyans are as follows

1. Des Bhuyan or Mal Bhuyan represented mainly as Paudi Bhuyans
2. Parja Bhuyan or Rautali Bhuyan
3. Bathudi Bhuyan
4. Santali Bhuyan
5. Dandsena Bhuyan
6. Rajkuli or Bar Bhuyan
7. Saontia Bhuya
8. Khandait Bhuyan or Pawanbans Bhuyan
9. Mushahar Bhuyan
10. Ghatwar Bhuyan

Among these sections of Bhuyan tribe Paudi Bhuyans, Santal Bhuyans and Saunti Bhuyans speak their (Bhuyan) dialect as their mother-tongue. There are some legends about their origin like the Pawanbans Bhuyans show their origin from Pawan (Wind God).

### **Customary law on marriage relations**

#### **Selecting the right partner**

Bhuyan boys and girls like to marry in villages other than theirs. The average age of Bhuyan girls at marriage is 14 to 16 years whereas it is 18 years to 20 years for the boys. Generally Bhuyan girls do not like boys at late age. In the first year of the marriage, the couple goes for child and the woman becomes pregnant. It ensures that the woman will not leave the man and will not indulge in extra marital relations.

#### **Pre and extra marital relations, adultery, infidelity and adoption**

Though it is rare but sometimes, Bhuyan boys and girls develop pre-marital relationship due to which the girl may become pregnant or even unmarried mother. In such situation the village council is called for. The father of the child is identified and asked to marry the girl. This gives a happy ending to the love story.

But if due to any cause the father of the child could not be identified then the girl is left to give birth to the child. Then she is married to a suitable widower who will take care of the mother as well as her child. Bhuyans never go for abortion. They explain it in the way that every life is a god's gift and so it has every right to come to the world. If anyone has committed any sin, god will punish him/her. Similarly they do not use contraceptives.

Infidelity or extra-marital relations are very rare in Paudi society. But virginity is not necessarily considered a virtue in Paudi society. Or in the other way, infidelity is not a sin for them. But extra-marital relation in out caste is a taboo. If a woman or a man goes for such a relation then her husband or his wife is excommunicated. But if the relationship is within the tribe, the husband and the wife have to stay together.

Extra-marital relationship happens mostly among the men and women who were in love previously but could not get married. They get involved in intimate activities secretly while going to forest or at agricultural field. But such cases are very rare in the society. When such a relationship comes to the knowledge of the husband of the woman, there happens a quarrel between the couple. If it is not solved at personal level it comes to the village council. Mishra in 1960<sup>118</sup> observed that to avoid domestic violence, village council listens to the complaint. The council calls for the other man/woman involved in the secret affair, considered as the accused. The council tries to convince the individuals by saying—'it happens with humans in flesh and blood. It was our responsibility to unite you both, at which we failed. As you are already married and have own families you need to stay faithful to your spouses. So stop such activities for the sake of your familiar peace' (Mishra 1960).

But there is no strict sanction for the individuals involved. Social prestige of an individual keeps utmost importance for a Paudi Bhuyan for which he or she carries a high moral within. So the fear of getting identified with immoral activity and being warned for such act in front of the whole village adequately

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<sup>118</sup> Mishra, K. C. 1960. Bhuyan Jati, Adibasi- The Journal of Tribal Research Institute-Orissa:4:88-117

influences an individual not to do it further. On the other hand, once got married, the man and the woman having love affairs prior to marriage generally do not take chances to further such acts. Again both the girl and the boy give each other enough chances to materialize the relation through marriage. If it could not happen, they break up the relationship with the consent of the both.

With respect to pattern, the Paudi Bhuyans differentiate the marriage on the basis of Bhai (agnatic) relation and Bandhu (non-agnatic) relation. Marriage between Bhai (brother) relations is prohibited where as marriage with Bandhu (friend) relation is accepted. Similarly marriage in between same khili (extended lineage) is prohibited. Furthermore, though it is considered that Paudis have no clan organization, they identify their common ancestral history in a particular way. For example, if a Paudi Bhuyan carries a khili name Jharnia (from streams), then it means that the forefathers of all such people with Jharnia Khili belong to a common ancestral village named Jharni (English meaning streams). In the process the villagers might have migrated to different places but marriages between Jharnias is always avoided. As a common practice, people of common forefathers carry common surnames. So marriage of individuals with same surnames like Swain and Swain, Pradhan and Pradhan, Dehuri and Dehuri is also prohibited. Restriction of marriage with other particular tribes or people is also to be respected. No form of cross-cousin marriage, sorroratic marriage or marriage in exchange practice was observed among the community in studied villages.

Young girls of marriageable age maintain a relatively restricted interaction with grown up boys of the village in every day public life.

In recent age, the educated and employed tribal youth mass has started demanding dowry. Though such practice cannot be accepted as a regular one but in general sense, the tribesmen feel that such trend spreads a disturbing message in the community. The society is more guided by customary values and morals than systematic laws. The very structure of the society gives space to accommodate the evens and odds in maximum possible ways.

## **Customary Law relating property inheritance and land tenure systems**

### **Property Inheritance Pattern**

The Paudi Bhuyans are marginal people who live in a subsistence economic setting. Usually they do not distinguish households in the village as rich and poor. They do not like to accumulate material wealth, rather considers their endowed social capital as the real worth. Among other material possession they give importance to those materials that are used in their everyday life and livelihoods earning pursuits. The wealth of the Paudi Bhuyans by and large consists of cattle, food grain, brass utensils, gold and silver ornaments and low land paddy fields.

Any wealth or property owned by individual family is distributed equally among all brothers after the death of the father except the oldest one who gets little extra share. Ornaments are exclusive possessions of women. If a Paudi Bhuyan dies without having any son to inherit his property, the same may go to his brothers living in own or separate villages, though a small share may be given to his daughter. In absence of the brothers the properties may be claimed by the deceased's father's brother, father's brother's sons, or by other close lineage members. If no such kin is found available the property is enjoyed by the tribal council called Pirh who assemble on an appointed day and enjoy a hearty feast by disposing of the deceased's belongings. A widow enjoys the right over the property of

her husband till her death, but forfeits her claims if she leaves the village on remarriage. a Paudi marrying the widow of his deceased older brother has, however, every right to inherit all the properties. In absence of male issues a daughter may enjoy the property of her father during her life time if she leads the life of a spinster, but with marriage she loses all rights on her parental property.

### **Ownership by inheritance/ transfer**

#### **Case study -1: Land ownership by daughter**

Late Keshab Behera of Jamardihi village was father of three daughters and a son. In course of time Keshab got his three daughters married. His son also grew up and attained marriageable age. All in a sudden Keshab died. Twelve days after his death his wife died. As ill fate it could be, his only son died after one year of his father's death. All of them died because of unknown sickness. In his native village people took it for granted that the family became victim of some evil spirit and had he not sent his daughters away in marriage they would have faced the same luck as their parents and brother.

Keshab left behind about 3 acres of agricultural land and his parental house. For about 5 years nobody, not even his consanguineal kins, dared to cultivate the lands of Keshab for unknown apprehensions. The village council asked Keshab's daughters if they wanted to leave their parents' land to be considered *Kotha jami* (Common's land). Responding to this his eldest daughter who lived with her husband and parents in law in Balibahal village of Bansapal block moved in her father's parental house in Jamardihi and started settling there. In her husband's village production from agriculture was far low from expected. Hence she wanted to settle in her father's village and cultivate his lands for better production and economic viability. Thus, before the village could take over her father's land as *Kotha jami*, it was taken over by the first daughter. She, with her husband started cultivating the lands left behind by her father. It has been about 8 years since she started living in the village as *Gharjhian*. However, nothing untoward has happened to her yet. Her two other sisters have not demanded any share of the father's property. Hence she has become the sole inheritor of her father's property by becoming *Gharjhian*.

**As per the customary law in the village she and her fore generations can continue to reap the benefits of her father's property as long as they continue to live in the village, although, in the present context, the legal ownership of the property would follow the revenue law of the state.**

As per the customary law of the area, which loosely prevails now, **if a household became *ni kutumba* i.e. if there is no inheritor in the male line or the line of male inheritors died or if no male inheritor in the *Kutumba* wanted to inherit the land, or if nobody exercised any right over the land then the land in question will be treated as *Bhogara bhuin*. However, the village cannot declare a land as *bhogara bhuin* without taking consent of married daughters of the deceased. If the married daughters of the *de-jure* land owner did not claim any right over the father's landed property then only it can be declared *bhogara bhuin*. A condition prevails that once a particular patch of land is declared as *bhogara bhuin* then no claim by any legitimate inheritors can be entertained.** In this case Keshab's eldest daughter saved her father's land from being declared *bhogara bhuin*.

According to the elderly people in Rugdakudar (old name Bijadi), in early days they were clearing forests on hills for shifting cultivation. After a clearing was made, the entire land was being equally divided by a number which is number of households plus one. For example, if there are 10 households

then the cleared patch shall be equally divided into 11 shares. The extra plot remains in the middle with equal number of plots on its either side. That extra plot is called the *bhogara bhuin* .

The *bhogara bhuin* is cultivated by the village as a whole utilizing their cooperative labour institution. The proceeds of the cultivation is harvested and stored in their *kotha ghara* (community house) for community feast during *Bisi Puja*. After that if any surplus was there then it was being utilized as aid to any family who was victim of any disaster or is loaned to any family who needed a loan in kind of grains to be returned afterwards or given to families who needed seeds during the start of an agriculture season with conditions for return in multiple units.

### **Case Study – 2: Inheritance by daughter being regarded as Gharjhian**

Benudhar Nayak of village Dumurisahi in Keonjhar district is having three daughters and no son. Benudhar sent off his eldest daughter in marriage to a person in Todadi village of Bansapal block. He also got his other two daughters married in nearby villages. When Benudhar attained old age his eldest daughter came forward to take care of him and his wife. Benudhar wanted to keep his daughter at home as *Gharjhian* so that she can take care of him and his wife till their death to which his eldest daughter and her husband agreed. Since then his eldest daughter is taking care of him and his wife and also managing the farm lands properly. Benudhar is also not having any brother and no inheritor in male line. Hence, his eldest daughter is the sole inheritor of his landed property. The other two daughters are having no objection to their eldest daughter owning all the landed property of their father.

**The customary law provides that if a person has no sons and there is nobody to take care of him at his old age then he may consider offering to any of his daughters to live with him as *gharjhian*. The *gharjhian* becomes kind of sole inheritor of parents landed property in absence of any male inheritors in the vamsa. If however, there are male inheritors yet they cannot inherit the property as long as a daughter continues to take care of the property as *gharjhian*. If at a later time the *gharjhian* does not want to take care of the property then the male inheritor is looked for. If the daughter who was living with her parents as *gharjhian* goes back to her parents in law and wishes her father's brother or her *kutumba* to take care of the properties then the *kutumba* manages the property. If the *gharjhian* does not want to live in the village and if her paternal family members (*kutumba*) feels reluctant to manage the property then the property goes back to the village council and becomes *bhogera jami*. Hence, each Bhuyan household wants to keep the landed property under ownership of *gharjhian* or *kutumba* so as to prevent the property being regarded as *bhogera jami*. Every Bhuyan household understands that once a landed property is declared as *bhogera jami*, it becomes nearly impossible to take back the property from the custody of village council.**

### **Case Study -3: Land transfer**

It is a known case that is about 70 years old. Butu Pradhan lived in village Gurusang, now coming under Bamparada block. During the reign of Raja Butu Pradhan owned about 10 acres of land. However, he could not pay the land cess to the king for some reasons. The king's tax collector was very annoyed with Butu Pradhan. Taking it as an opportunity the then Pradhan of Gurusang Raghu Pradhan in connivance with the tax collector/ Sardar managed to pay the land cess as was applicable for the extent of land under Butu Pradhan's ownership and thus could change the ownership of land in his favour without the knowledge of Butu Pradhan. Butu Pradhan continued cultivating the land believing

that the King had taken no action against him. In the meanwhile Butu Pradhan passed away. When his sons went to cultivate on their parental property they were opposed by Raghu Pradhan and his sons and were asked to restrain from cultivating those lands. Butu Pradhan's sons consulted the Pirh Sardar. On examination by the Pirh Sardar it was found that the land had already been transferred to Butu Pradhan on records. So the Pirh Sardar could do nothing.

In another case in the same village, Raghu Pradhan could take over the lands of Sundar Nayak to the extent of 7.5 acres by paying the land cess to the King when Sundar failed to pay the land cess. Raghu Pradhan forged to transfer the property to his name through the tax collector.

**The customary law of Paudi Bhuyan spells that if a person fails in paying legitimate land cess to the authority (then the King) then he may be disowned from his right over the land. Further, if records support the transfer then the Pirh can do nothing on the matter, although it may be an unrighteous transaction. During the reign of Royal dynasty, it was a rule that if anybody failed to pay due land cess on time and if somebody other paid the cess that was supposed to be paid by the original land holder then the landed property can be owned by the other person who paid cess for the land in context.**

#### **Case Study – 4: Property inheritance by Gharjhian**

Khageswar Dehuri of Singipur village in Keonjhar district has two daughters and no son. Both the daughters were given in marriage within the community in different villages. At his old age Khageswar wanted any of his daughters to take care of him and his wife. His eldest daughter Sulochana Dehuri expressed interest to live in her father's place as Gharjhian and take care of her parents. Her husband also agreed to the decision. So Sulochana and her husband are staying in Singipur in Sulochana's parental house. They continue to cultivate the lands of Khageswar. The village council recognizes Sulochana's rights on her father's landed property as long as she would continue to live in the village.

#### **Case Study – 5: Property inheritance by youngest daughter as Gharjhian**

Natha Dehuri of Singipur village in Keonjhar has three daughters. While he had sent off the first two daughters in marriage, his youngest daughter lived with him who was unmarried. Natha Dehuri could arrange to find a match for his youngest daughter and the boy expressed his willingness to live in Natha's house after marriage. Thus, the marriage was solemnized and the youngest daughter of Natha started living there as Gharjhian. **As per customary law, eldest daughter usually becomes Gharjhian but there is no strict restriction that only eldest daughter should be considered Gharjhian. The condition prevails that the Gharjhian would continue to be the rightful owner of father's property as long as she lives in parental house.**

#### **Case Study – 6: Property inheritance by Gharjhian and property allocation to her affinal relation**

Hadibandhu Nayak is a resident of Jamardihi village in Pallahada area of Angul district. He has only one daughter. Before giving her in marriage Hadibandhu was keeping a condition with the prospective match that after marriage he would want his daughter to stay with him as Gharjhian. In course of time he found a suitable match for his daughter in Narottam Nayak, resident of a village in Bonei area. As per the pre-marriage negotiations Narottam started living with Hadibandhu's family after marriage. By virtue of the marriage Narottam could get two sets of properties; the property of his father by inheritance and the usufructory rights over the property of his father-in-law by virtue of the fact that



his wife was recognized as Gharjhian. In course of time Narottam found his inherited property less productive and hence concentrated on the properties of parents in law. Narottam left his inherited property to his younger brother.

After some months Narottam's younger brother visited Jamurdihi and lived with his brother's family for some days. He found that the agricultural land in Jamurdihi is more productive as compared to his parental land in Bonei area. Hence, he desired to live in Jamurdihi as a Bandhulok. He approached the village council in Jamurdihi and expressed his intent. The Jamurdihi village council admitted his request and offered him a patch of land for building house and a patch of land to cultivate from the pool of community land held under ownership of the village council.

### **Land allocation to relative/stranger/refugee**

#### **Case Study – 7: Land provisioning to relative**

Haria Nayak, an original inhabitant of Tagarpada village under Bansapal Block of Kendujhar district married to a lady belonging to Jamurdihi village. Couple of years after his marriage he came and stayed in village Jamurdihi as *Bandhu* (Relation). Gradually he developed likeness for the village and wanted to live in Jamurdihi for ever. Although he was living in his parents in law's family, he wanted to be an independent household in the village. He expressed his intention to the village council and stated that he wanted to live in Jamurdihi permanently as a household and if his request was granted then he would pay his due contributions to communal events in the village. The village council granted his request and provided a patch of land to him to cultivate. Since then Haria Nayak is enjoying the status of a permanent household in the village and as such enjoying all facilities of the village and also avails entitlements from the government.

As per their customary law, if a person who happened to be a relation of any household in a Paudi Bhuyan village comes and stays in the village and later on takes interest in becoming a permanent resident in the village then he must seek the consent of the village council by expressing his intent. If the village council feels convinced then they grant him the request. Then the person can enjoy the status of resident of the village. The village council provides land to the person, such land which must be under the possession of the village as community land and such land on which nobody had exercise any claim. Other conditions that may apply includes:

- If any person from outside the village who happens to be a relation of a household in the village comes and stays in the house of his relation who is a permanent resident of the village then the insider household may give a part of his own landed property to the outsider.
- If a married daughter, along with or without her husband and children, comes and stays in her father's house may also get share of her father's landed property.
- If the outsider is not comfortable with the share of land got from sources of their relation then he/she may request the village council to provide him/her some land. The village council, if convinced, may provide a patch from the community land or from such land which is otherwise not claimed by any other.
- If an outsider removed from any village having been regarded as outcaste<sup>119</sup> and called *Guhala toka*<sup>120</sup>, may also get a patch of land from the village council under certain conditions.

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<sup>119</sup> The marriage rules are very strict and forbid marriage between two persons belonging to same vamsa. The same is also applicable for uncle-niece marriage. If such an event occurs then the man and woman are

The *guhala toka* seeks shelter in some other village with his newly wedded wife. The council of the village where he seeks considers his plight. There is a traditional process following which a person outcaste by some other village for some particular sin or violation of traditional norms can be brought back into the caste. On agreeing to the condition that he would follow recommended practices to be brought back to caste the village council allows him to live in the village. In the meanwhile the traditional ritual of bringing-back-to-caste<sup>121</sup> is made and then the man and his nuclear family get status of permanent resident in the village. After that the village council considers giving them land to cultivate and allows their participation in communal events in the village.

#### **Case Study – 8: Strangers getting share of land from communal property**

About two decades ago a family from Talapada village under Suakathi GP of Keonjhar district sought refuge in Lunaghar village under Bansapal block limits. The shelter seeking family had no relatives residing in the Lunaghar village and hence the family was a stranger to the people of Lunaghar. However, when they appealed before the village council for approval to live in the village the village council allowed the family to live in the village. On asking the family head about reason of leaving his own village and seeking shelter in another village, the family head described his woe, pain and misfortune that he suffered in his own village. According to him, in his own village there were regular conflicts within the family for unknown reasons leading to unhappiness, family members suffered from diseases and sickness, infant deaths and such things happened to him which he factored as curse of some malevolent spirit. Two of his children died suddenly, he himself kept bed ridden out of sickness and therefore he decided to quit his original village Talapada and seek refuge Lunaghar. He offered to obey all norms and disciplines in the village, pay for community rituals and festivals. The village council considered his plights and allowed them to live in the village. In the meanwhile he participated in the Dion Bandan ritual of the village for which he had to spend one *khandi* (40 mana i.e equivalents to one quintal) of rice, one he goat, and number of new earthen pots. The villagers relished a grand feast out of the contributions and after that included the stranger family in their community. After that the family got share of land from the village common land, could access entitlements under beneficiary oriented government schemes. The villagers also offered a patch of *anabadi* land for constructing house and provided two acres of forest land to his possession. The same forest land has been settled in favour of the family under Forest Rights Act with consent of the village community.

**The customary law provides for securing patches of land under community ownership which may be distributed to families on case to case basis. The law also provides for taking over long**

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punished. They are driven out of the village and considered outcaste. The elderly villagers give them a measure of rice (about 1.5 kilo) and lead them to the boundary of the village where they make the couple cross the boundary and say good bye to the couple who committed the incest. Rice is provided to them to subsist during the period till they seek refuge in another village.

<sup>120</sup> A person who married within own Vamsa, or if a boy and girl from the same vamsa get eloped, or if paternal uncle and his niece got married/eloped then the man is called *guhala toka* (Herds man). It's a derogatory term for a man's personality.

<sup>121</sup> The outcaste couple from any other village is given shelter in a new village by approval of the village council. On a specified day, usually during Dion Bandan Puja the specific ritual is conducted in favour of the refugee couple after which they get resident status in the new village. If by the time the outcasted newly-wed couple takes shelter in the new village the Dion Bandan Puja would have been over then they have to wait till the next Dion Bandan Puja to be brought-back-to-caste through the ritual. Till then they cannot take part in any village ritual, festival or any such community events; they cannot avail any beneficiary oriented government entitlement; and they would not need to follow the life cycle ritual related restrictions.

**abandoned lands into the community possession and utilizes it for common purposes or for distribution to needy families. In this case the law as applied for land provisioning to *guhala toka* was applied to which the community members had no objection.**

#### **Case Study – 9: Land provisioning to out caste people**

About 25 years ago an outcaste young couple from Baya Kamtua village of Pandajhar GP of Keonjhar district sought refuge in village Lunaghar. The husband and wife belong to same vamsa for which they were declared outcaste in their own village and hence were driven out from their own village. The village council in Lunaghar asked them the reason for choosing Lunaghar village to live in to which they responded that in other nearby villages there is hardly any land available that they can get to cultivate. The village council asked some more questions to be convinced that the couple had integrity for the village and hence allowed them to live in the village. On the occasion of Dion Bandan puja, the so called outcaste couple was made pure through a ritual. To their capacity, the couple contributed one *khandi* of rice, one he goat, and required earthen pots for the feast to the village council. After the community feast they were taken into their caste. The couple was provided a patch of land from the village *anabadi* to construct their house and provided a patch of forest land for cultivation.

Once the outcaste couple was taken back to caste through rituals and since then they have been living happily in the village and enjoying all facilities, privileges and entitlements by the government.

#### **Case Study – 10: Granting of share from common property/ community resource to Bandhulok (Relative/ affinals)**

This case dates back to about three decades. Khadia Dehuri, original inhabitant of Fuljhari village in Sundargarh district for some reason left his village and came to live in Singipur village in Keonjhar district. Singipur village is the maternal village of Khadia Dehuri. During his childhood his mother died out of some unknown sickness and hence his maternal uncle took him to Singipur. Khadia was brought up in Singipur village and hence had developed a natural affinity to live in that village forever. However, on attaining adulthood he had to go back to Fuljhari to take ownership of his parental property there. After his mother's death his father had married again and fathered a son and two daughters. Khadia was thus not the sole inheritor of his father's property. So he wanted to go back to Singipur where he was brought up and hence had a natural affinity for the village and approach the village council there to provide him a patch of land for cultivation and house building. He did so. The village council in Singipur knew him and knew his relationship with that village for which they considered him Bandhulok and following prescribed customary law the village council provided him agricultural and homestead land from the common land held with the village council.

#### **Land mortgage, sale and unlawful acquiring**

##### **Case Study -11: Land Mortgage**

Jagar Pradhan, aged about 58 is a resident of Jamardihi village. He owns uplands of about 4 acres. On the said land he had raised cashew crops about 15 years ago. About 12 years ago he fell sick for days and needed money for treatment for which he took a loan amounting Rs. 3000/- only from one money lender Bijaya Kumar Sahoo, resident of Panchunayika village. To avail the loan Jagar Pradhan had mortgaged his cashew field to the money lender. It was agreed upon by the two parties that the

lender would have usufructory rights over the said patch of land till the loan is paid back. There were no witnesses during the bi-partiate transaction. In the year 2015, Jagar could gather money to repay the loan. As per conditions of the loan transaction the money lender was free to enjoy usufructory rights, especially harvesting of cashew, on the said land towards interest money. Hence, Jagar was to pay back the principal amount only.

When Jagar offered to pay back the loan amount the money lender started foul play. Instead of the moneylender receiving the money and freeing the land, he tried convince Jagar to take a top up loan in addition to the earlier loan and give the ownership of land to the money lender. However, Jagar wanted to be free from loan and take his land to his custody. Since last two years he has been running after the moneylender to settle the loan with whatever amount the moneylender would calculate, in presence of witness. The moneylender charged exorbitantly high compound interest on the loan amount which Jagar could not pay. The moneylender continued to evade the settlement. The money lender still exercises his rights over the cashew field. Then the matter was taken to the village council. The village council could not resolve it because there was no witness to the deal. Jagar took the matter to the knowledge of the Pirh and requested intervention of Pirh in settling the dispute. The Pirh could not come to his help for lack of witness. No judgement could be made at Pirh level. The Pirh president of Jamurdihi, Barika Behera, observed that the matter was difficult to solve as according to the moneylender the interest over the loan was mutually agreed and there were no witnesses while the deal was made. On the other side Jagar is not able to produce any evidence or witness to what was mutually agreed. Hence the Pirh can't be of any help to Jagar. Jagar has appealed for taking the matter to the level of Mahapirh.

As per customary rule operating in the area, more prominently in past, **if a loan taken from a non-tribal money lender and if the loan remains unsettled by end of 10 years then the ownership over the mortgaged land would be vested in the money lender.** On this count, the judgement at the Pirh level was going in favour of the money lender. However, the regulation 2 of OSATIP prevents the land alienation i.e. the legal transfer of ownership from tribal to non-tribal. Knowing it well, in this case, the money lender has been trying to exercise *de-facto* ownership over the land in the knowledge of the community. Jagar considers it a forcible possession over his land on the part of the money lender and hence considering taking the matter to police for a solution.

The cashew field is still under the control of the moneylender.

### **Case Study – 12: Mortgage of patta land**

This case is about Babu Nayak resident of Srilakhala village located on the meeting point of borders of Keonjhar-Sundargarh-Deogarh districts. The meeting point of three borders is called *Teentalia Banmalia* by the Bhuyans. In very early days Pirh meetings were being conducted there.

In this case, Babu Nayak took a loan of Rs. 500/- from a non tribal money lender about thirty years ago. He had mortgaged about 3 acres of his land to avail the loan. Babu Nayak could not repay the loan within the scheduled time as agreed between the two parties. Hence the money lender kept the land under his possession. Babu Nayak realized that he is going to suffer a huge loss by losing 3 acres of land for just a loan of Rs. 500/-. He wanted to go for a negotiation with the money lender for a win-win situation. He offered the money lender one acre of land towards the settlement of loan and wanted the rest 2 acres of land to be freed by the money lender. The money lender did not agree to

his proposal and kept the patch of 3 acres of land under his possession. Then Babu Nayak appealed at the Pirh against the money lender and sought the intervention of Pirh in quick settlement of the dispute. The Pirh observed that it was a very old case and there were no witnesses to the deal. For years together the matter was being discussed at Pirh level meetings but it remained unsolved.

Apart from the mortgaged land Babu had got some more land in the village. He continued to cultivate there to manage his family. As on today Babu has withdrawn himself from the disputed land and the money lender is no more. The land is still under possession of the family of the deceased money lender. It is heard that the money lender's family have also managed to get the land recorded on their name as the *de-jury* owner.

**As per their customary law a land mortgaged to a non tribal should be freed from mortgage within 10 years by settling the loan. After that period the Pirh also feels it unjust to demand land back from the money lender.**

### **Case Study – 13: Informal sale of landed property**

Bhadi Behera, aged about 45 years is a resident of Rugdakudar in Bamparada block of Deogarh district. In the year 2011, Bhadi Behera in order to meet the treatment expenses of his father and subsequently to meet expenses on his father's mortuary rites informally sold a patch of land measuring 7 decimals to Dwijadhan Sahoo of the same village for a negotiated amount of Rs. 7000/-. Dwijadhan Sahoo, a non-tribal, is well known in the cluster of villages as a money lender. There was no conflict in the deal whatsoever. In the meanwhile Bhadi's sons grew up as adults. In the year 2017 the sons of Bhadi wanted to bring back the land which their father had sold to Dwijadhan Sahoo. They consulted Sahoo for this but Sahoo did not agree to give back the land at any cost stating that he had purchased it from Bhadi and the deal was never a case of mortgage. Then the sons of Bhadi placed the matter before the village leaders and the Sarpanch for their judgement with the appeal to give judgement in favour of Bhadi's sons. The leaders and the Sarpanch examined the case and realized that no paper work was done regarding the transaction. Hence, they found it a fit case to restore the land to Bhadi's sons. However, while inspecting the land the leaders realized that there was a standing crop grown by Sahoo along with some fruit bearing trees on the said land. So the leaders decided that Bhadi's sons must pay a negotiated amount of Rs. 2000/- towards the standing crop in order to get back the land or to wait till the crop was harvested. Bhadi's sons did not want to wait further and so they paid the negotiated amount of Rs. 2000/- towards the crop loss on the part of Sahoo in presence of village leaders. Thus the land got restored to Bhadi and his sons.

**In this case the transaction was between Bhadi, a tribal and Dwijadhan, a non-tribal. The regulation 2 of OSATIP Act of the State provides that the tribal land may be alienated in favour of a non-tribal under specific terms and conditions. So Dwijadhan wanted to keep the land under his physical possession as land alienation was next to impossible in this particular case. Further, Dwijadhan had enjoyed cultivation and usefructory rights over the land for more than five years starting from 2011 which compensates the interest that would have been incurred on the principal loan amount of Rs. 7000/-.**

**The case may be under the purview of customary law. That, if a transaction happened between a tribal and non-tribal on the matter of an informal sale or mortgage, then the land can be freed from the hand of the non-tribal by paying back the principal loan amount within 10 years of the**

**transaction date. On the other hand there is legal restriction on land alienation. Hence, this is a case where the customary law and the mainframe revenue law of the State are found complementary to each other.**

#### **Case Study – 14: Land Mortgage**

The case happened about 30 years ago. Badia Dehuri belonging to Maradihi village under Nayaput GP took a loan in kind from Jaladhar Dehuri of the same village. The loan was in shape of one *khandi* of paddy i.e about 40 mana equivalents to one quintal. This loan Badia took to pay bride price to get his son married. For availing the loan Badia Dehuri mortgaged his land to the extent of about 80 decimil to Jaladhar Dehuri. The loan had not been repaid by the time Badia Dehuri breathed his last. After his death, his sons wanted to get back the land from Jaladhar Dehuri by paying back the loan in equal measure. But by then Jaladhar had completed the official formalities of taking over ownership of the land. When the sons of Badia Dehuri approached the Pirh begging justice to them the Pirh reviewed the case. The Pirh found that there were no witnesses at the time of loan transaction and land mortgage between Badia Dehuri and Jaladhar Dehuri. Again, more than 10 years had passed in between. So the Pirh could not restore the land to the sons of Badia Dehuri.

**As per their customary law the Pirh could have played the role of a negotiator to restore the land to the sons of Badia Dehuri provided that the transaction had happened between a tribal and non-tribal which is illegal under regulation 2 of OSATIP. In this case since the transaction happened between two persons belonging to same tribal community the transaction was held legal.**

#### **Case Study – 15: Land mortgage leading to transfer of ownership**

This is a case that occurred about 30 years ago. Hadibandhu Dehuri of Singipur village mortgaged his land to the extent of 50 decimils to the money lender Madhusudan Ghana of the same village. Nobody knew the value that was transacted towards mortgage of the land. Hadibandhu took a cash loan against the land mortgage, some people say so. However, before repaying the loan Hadibandhu died. When his son grew up he got to know from his family members that his father had mortgaged a good patch of land to Madhusudan Ghana. Thus he approached Madhusudan to repay the loan and get his parental property free from the money lender's custody. Madhusudan stated that it was not the case of a mortgage rather Hadibandhu had sold it to him for an appropriate value. He didn't say what was the value transacted. Hadibandhu's son approached the Pirh for justice on the matter. The Pirh examined the matter and Madhusudan produced record of right in favour of his ownership over the land. The Pirh was not convinced in the beginning and thought that it could be a forged document. So the Pirh further examined the matter in the Tahsil Office and got to know that the ownership of the said land had been transferred from the name of Hadibandhu Dehuri to the name of Madhusudan Ghana. Thus the Pirh suspended the case from any further investigation and intervention.

On this matter, in the context of their customary law, the Pirh leaders observed that each transaction should be made in presence of some witnesses. If Hadibandhu was not able to pay back the loan but wanted to secure his land he should have reported the matter to Pirh well on time. In this case the son of Hadibandhu reported the matter to the Pirh decades after the transaction. There was no evidence of transaction and the real time situation was that the record of right on the said land was held by Madhusudan Ghana. Pirh has its own limitations and to solve a matter Pirh would look for evidences in

favour of the claim. Hence in this case the Pirh had virtually nothing to do as evidences were there favouring Madhusudan Ghana.

### **Case Study – 16: Acquiring land ownership by cheating**

This case happened before about three decades. Buddhadev Nayak of Singipur village owned about two and half acres of land. He fell sick and his sickness continued through many months. His land could not be cultivated. The family was running through difficulties. In the meanwhile Buddhadev died. His widow was in great difficulty to conduct the mortuary rites of her husband and later to that to manage the family. For the purpose as stated she mortgaged her land to Laskar Dehuri of the same village for an amount of Rs. 200/- in cash and two Khandi rice (about 200 kilo) in kind. Since Buddhadev's children were at childhood and his widow was unable to cultivate the lands alone the cultivable lands were lying fallow. At this juncture Laskar Dehuri offered to cultivate her lands on share cropping basis. The deal was that Laskar would pay half of the harvest from the said lands to widow of Buddhadev towards share of land and would retain the other half for his labour. Lasker maintained the conditions for about two-three years and afterwards did not pay anything to the widow of Buddhadev towards share of land. Buddhadev's widow thought that Lasker might be retaining the whole harvest with him towards the loan taken on mortgaging the land. She was mistaken. Years passed by and in the meanwhile the widow of Buddhadev also passed away leaving behind her two kids. On the other side the son of Buddhadev named Kansari Dehuri attained adulthood and started working elsewhere for income. When he generated some surplus cash in hand he wanted to free the mortgaged land. He approached Laskar Dehuri with the intent to get back his land by paying for the loan taken. Laskar stated that Kansari's mother had sold him the land and in the meanwhile Laskar has completed the formalities to become legal owner of the land and that the record of right was held with him. Disappointed Kansari approached the Pirh for justice. When the Pirh leaders asked Laskar about the matter observing that it was a gross cheating to a widow, Laskar named some people who happened to be witnesses when Kansari's mother sold it to Laskar. The witnesses had also died. Hence, the Pirh could not do any favour to Kansari.

The customary law provides that a land acquired by conspiracy or cheating can be restored to the original land holder provided that there were witnesses to the deal. Further, the Pirh could have done justice in favour of Buddhadev's widow and later to his son if they had made the deal by mediation of the village council or Pirh.

### **Land pooling/ community land distribution**

#### **Case Study – 17: Takeover of land as Bhogera jami**

This is a case that had happened about three decades ago. Late Kathu Dehuri of Nagira village under Pallahada block of Angul district had about 2 acres of recorded landed property under his possession. He was very old and sick. His only son was also sick and weak. Neither the father nor his son was able to cultivate the land. They could not even repair their farm bunds and the land remained uncultivated for years together. The village council realized that neither Kathu Dehuri nor his sick adolescent son would be able to cultivate the land anymore. So they decided to declare it as *bhogera jami* i.e common property under village custody. In course of time Kathu's son grew up and got cured from his prolonged sickness. He got married. He kept on requesting the village council to give him back his father's land which was under the custody of village council and had been declared as *bhogera land*.

All his plights failed. He took the matter to the Pirh meeting but to no gain. He survived and subsisted his small family depending on production from some other lands which was under ownership of his family. After some years Kathu's son also died leaving behind his widow and two sons.

Kathu's grand sons have also become adults now. They find the landed property left behind by their father quite inadequate to manage two families. Hence they have been knocking at the door of the village council to get their grandfather's landed property back from the custody of village council which had been declared *bhogera jami*.

**Their customary law states that once a land has been declared *bhogera jami* it cannot go back to the original owner. The law may be challenged at any level but there will be no gain. The only possibility lies with the mercy of the village council. Not by law but by mercy the village council may give the land back to the original owner.** The two grandsons of Kathu have been trying their luck to harvest the mercy of the village council which is the only way to get back their parental land. It is for this reason that they are not appealing at any Pirh level.

It is noteworthy here that the Paudi Bhuyan customary law considers it a crime if a land owner does not cultivate the land held by him or under his possession for years together. In such cases the village council seize or takeover that land and declare it as *bhogera jami*. Once taken over by the village council it is nearly impossible to get back it. Hence, no family in any village fallow or abandon their land for a long time.

#### **Case Study – 18: Donating land to the community**

There used to live a childless couple belonging to the Munda family in the village Lunaghar. On attaining their old age the couple decided to donate all their landed property to the Bhuyan samaj in the village. So they called for a village meeting to declare that they are donating their landed property to bhuyan samaj that would be thenceforth regarded as common property of the village. After taking the land into possession the Bhuyan samaj in the village made all arrangements for the couple to live their old age comfortably. The community cooperative labour institution was engaged in cultivating the land. Part of the harvest was being utilized for the requirements of the old couple and the other part was being utilized for community feasts during village rituals and festivals. When the couple passed away the villagers made all arrangements to conduct their mortuary rites. It is a cultural restraint that no Bhuyan person should touch the dead body of person belonging to Munda family. So the Bhuyans of Lunaghar made arrangements to conduct the mortuary rites by inviting Munda people from nearby villages.

The land donated by the childless Munda couple is secured by the Bhuyan samaj in the village as *bhogera jami* which is under the possession of the village council. The land is being cultivated and from the harvests part of the expenses on community rituals and festivals are met.

**The Bhuyan customary law provides that after death of a childless couple or a couple having no inheritors for any reason the land is taken over by the village council and thenceforth the decision over utilization of the land is vested in the village council. However, if a couple who is childless or otherwise not having any inheritor decides to donate the land to the village council prior to their death then the village council would remain committed to take care of the couple till death. Thus, declaration for donating land before death has the advantage.**



## **Customary law governing land ownership in case of marriage in out group**

Paudi Bhuyans maintain a group hierarchy by placing themselves at the top, restricting other tribes like Juangs, Kolhs, Santals, Mundas, etc, as out groups on the basis of Hindu beliefs and practices like cow meat non eater and eater.

If in any incident a Paudi Bhuyan boy or girl marries an out-group girl or boy, he or she faces permanent social ostracism. The father of the girl or boy, who has gone for a marital relationship with prohibited tribe, faces a temporary cessation of his membership in the tribe. He has to practice particular rituals against the deeds of his child. These rituals, practiced by the father, are the rituals that are practiced during death ritual of a member in the community. In the next, the Bhuyan council is called for. The Patta Pradhan (who is a priestly adviser to the council of villages) prepares ritual water by touching the feet of all the members of the council which is drunk by the father to become a part of the Jati (community) and simultaneously allowing re-entry to the tribe. Similarly while a Bhuyan boy marries a girl from other permitted tribes like Bathudi and Gond, the girl is ritualized and is made a Bhuyani, a woman of Bhuyan tribe. This facility is not given in case of marriage to prohibited tribes or castes. But it is noteworthy that the family never prefers to go for an arranged marriage of a boy or a girl beyond the Paudi Bhuyan community. Only love marriages with Bathudi and Gond are accommodated in the community.

Certain generosities with respect to marriage rules are also observed. The boy/girl marrying in prohibited or out-tribe can come to his father's house but neither can enter the parental house nor can stay there over night. He is provided with food, which he eats outside the house like any other out-group member. For the Paudi Bhuyan such children are like nonmembers of their society. In recent time, few families are allowing their children, got married in 'out-group' to stay for one or two days in home after which they have to leave. No permanent residence is allowed to such people in Paudi Bhuyan society.

Yet there is another kind of marriage in vogue in Paudi Bhuyan society. It is called Mankad Bibah (Monkey marriage). This marriage is preferred by people who are ultra poor and are unable to bear the expenses on an arranged marriage. This kind of marriage is equivalent to Tola Kania type of marriage of non-tribal Hindus. In this case first a boy and girl consent each other for marriage. Then the girl's parents take their girl to the boy's place where all processes are conducted at the house of the boy and all expenses are borne by the parents of the boy.

### **Case Study – 19: Property disputes for marriage in out-group**

The Paudi Bhuyan have prohibitions of marriage in out-group which they call Pani Achhuan Jati. A girl named Sabita Nayak, only daughter of Kunja Bihari Nayak of Jatra village under Bansapal block of Keonjhar district eloped with a boy belonging to a Pani Achhuan Jati. The parents of the girl had to face the repercussion of the incident. The village council order excommunication with the family of Kunja Bihari Nayak as his daughter had eloped with a boy of out group. After living as an excommunicated family in the village for some months Kunja Bihari, considering his daughter was dead, had to perform the mortuary rites of his daughter to be admitted in their caste. He had to pay to the village council in shape of rice, he goat and earthen pots towards expenses on readmission to the caste. Thus the relationship between the father and daughter got severed forever. As Kunja Bihari did not have any son and Sabita was the only daughter so he had to live under the care of his nephew

(brother's son) till his death. The landed property and other movable property, whatever was left by Kunja Bihari would be enjoyed by his brother's son.

**As per provisions under their customary law, if a girl marries a boy of out group then the village council of the girl's village shall excommunicate her family. The family will be required to follow certain rules and rituals to be readmitted in the caste. The girls father shall have to conduct mortuary rite for his daughter believing that she was dead. He will have to involve the service castes like barber and washerman to conduct the rites in the very traditional manner. Then he will have to spend for a good feast to the village council.** After all these the family will be readmitted into their caste. In case a family is not having enough resource to conduct the readmission rites then the house head requests his agnates to help and contribute for the purpose. Otherwise, as long as one has not been able to gather resources for readmission to caste the family suffers from the typical impacts of excommunication punishment.

### **Case Study – 20: Marriage with other caste**

This is a case that happened roughly 4 years ago. Jogendra Dehuri, son of Akhila Dehuri of Singipur village was in love with a girl named Chereng Barika hailing from a Gopal caste family in the same village. Gopal caste is considered a Pani Saras<sup>122</sup> caste by the Paudi Bhuyan. On finding an opportunity Jogendra and Chereng eloped from the village to marry and settle elsewhere. The girl's family went to the Police to complain against Jogendra and request police intervention. The police knowing well that that was a kind of customary dispute sent them back with the advice to lodge the complain with village council or Pirh. Since both the boy and the girl are of the same village the elderly people from Paudi Bhuyan side and from the Gopal caste side discussed the matter. The resolution they arrived at was that if the marriage happens then the girl shall have to sever all relationship with the parents for ever and would not visit her parents any day. If that was not acceptable on the part of the girl then she should not give consent for the marriage and by that the marriage cannot happen. And the third option was that both the boy and the girl forget each other and go back to their respective castes after performing due purification rites, especially applicable for the Bhuyan boy. Both Jogendra and Chereng discussed the matter in between and decided to separate from each other and go back to their respective castes after performing suchi i.e. purification rite.

After that the Dalabehera of Paudi Bhuyan caste called the Jati Behera to conduct purification rites for readmission of Jogendra to the caste.

**The customary law in this case observes that had both of them got married then the girl would have been accepted by Paudi Bhuyan considering the fact that the girl hailed from a Jati Saras caste. But she would have to sever all relation with her parents for ever. In that case the boy would have all inheritance rights. If the marriage had been solemnized on this condition but afterwards it was seen that the girl maintained relationship with her parents then the couple would have been driven away from the village and the boy would lose his rights on inheriting parental property.** Adding to that the Paudi Bhuyan village council could have taken decision to

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<sup>122</sup> There are some castes with whom Paudi Bhuyan marriage is not strictly prohibited but conditions apply. Such castes are called Pani Saras Jati. There are castes with which Paudi Bhuyan marriage is strictly prohibited. Such castes are called Pani Achhuan Jati.

excommunicate the girl's family. Thus, this case was viewed as a conscious decision by the boy and the girl to break the proposed marriage and by that restore the relationship among the caste and the tribe in the village.

#### **Case Study – 21: Marriage in Pani Achhuan Jati leading to disowning from property inheritance**

The matter occurred about 10 years ago. Dai Giri, a boy belonging to Taramakant village was in love with a girl Jambi Munda belonging to Kolha community living in Kadadia village. One day the girl eloped with the boy and came to the boy's village. When the Bhuyan samaj got to know that the girl belongs to Kolha community with which marriage is strictly prohibited it became a grave concern of the leaders. Immediately the caste councils of the boy's side and the girl's side sat for dispute resolution. The boy and the girl were also made participants in the proceeding. The caste councils reasoned with the boy and the girl about the traditional restrains observed in the case of marriage and advised them to separate from each other, conduct purification rites and go back to their respective communities. However, the boy was so much fancied by the girl that he wanted to marry her irrespective of the consequences. They decided to marry each other and did so. This case seriously hurt the members of the Bhuyan caste council. So, they decided to drive away the couple from the village and also excommunicate the boy's family in the village. The decision was taken and executed. After some months the boy's parents conducted required rituals, purification rites, paid the penalty and offered a feast to their community members in order to be readmitted to the caste.

The Bhuyan boy is now residing in a Kolha village where he does not face any challenge to lead a life as he wished. However, he has been disowned from his parental property. His elder brother is now the sole inheritor of the parental property.

According to the Bhuyan elders, the customary law regarding the acceptable conditions of marriage between two persons is quite strictly observed because it is not two persons marrying each other; it too means that two communities are marrying. If they do not observe strict discipline on this matter then such matters would one day factor for their identity crisis and death of traditions and customs.

#### **Case Study – 22: Uncle-niece marriage and disowning from parental property**

This case happened in the village Singipur about three decades ago. Pion Nayak, son of Raghu Nayak was in a relation with his niece Kainti Nayak, daughter of Ramei Nayak. On getting an opportunity they eloped and left the village. Uncle niece marriage is held high order incest in the culture of Paudi Bhuyan. Hence the village council observed it as a offence and immediately excommunicated the families of the man and his wife. The man and his wife were also considered dead for which their mortuary rites were conducted. However, the excommunication punishment given to the families of the man and his wife was not lifted. They were considered out caste. Hence to come back to the caste the two families had to conduct purification rites, pay the levied penalty, paid for the community feast in kind of rice, he goat and earthen pots. The village council admitted them in the society.

The customary law in this context applies that **had the uncle and niece not eloped they would have been taken to the village boundary and would have been ritually driven away from the village.** The families of the man and his wife were sure to suffer excommunication. In this case the man lost his right from inheriting parental property. His two brothers became sole inheritors of parental property. If he had no brothers then the property would have gone to the hands of the larger family or kutumba.

### **Case Study – 23: Marriage within the Kutumba**

This case happened in Singipur village about two decades ago. A man named Gohia Dehuri was in love with a girl named Jagani Dehuri in the same Kutumba. On getting a suitable opportunity they eloped and left the village. They were considered dead for the kin members and accordingly rituals were conducted. Their families suffered excommunication by decision of the village council. Years passed by. The parents of the boy and the girl passed away. The couple was residing in Netrabahal village in Deogarh district, far away from their village. In the meanwhile they also became parents of two children. However, after about 15 years of their marriage they came back to the village to claim their parental property. However, by then their parental property that remained uncultivated for years together had been seized by the village council and before being declared as Bhogera Jami a family in their Kutumba wanted to cultivate the said lands. Thus the landed property of the couple remained in legitimate custody of the Kutumba.

The customary law states that after a person is disowned from his parental property, it would pass on to his sibling in male line. If there is nobody in male line, the usufructory rights would be given to daughters. If daughters express unwillingness to cultivate the land then it may go to the fold of Kutumba.

### **Case Study – 24: Uncle-niece marriage may be excused under circumstances**

This matter happened in village Barakala about two to three years ago. Binior Nayak, aged about 18 years, son of Mohanty Nayak eloped with his distant niece, aged about 16 years, daughter of Babaji Nayak. The villagers, however, could catch hold of them and brought them to village. When the two urged to marry and insisted on that it was observed grave incest by the villagers as both of them belong to the same Kutumba. Finally, the villagers took them along with them to the village boundary and drove them away giving them only about 2 kilo of rice. As per rule their families suffered excommunication. After some days their families conducted due processes to be readmitted in their society. In the meanwhile two years passed by. The couple wanted to come back to the village and wanted to stay with their families. This intention they expressed to the Pirh. After several rounds of discussions the Pirh could reach at a decision and the **Pirh agreed that it is possible for the couple to be readmitted in the society provided that they pay a penalty of Rs. 50,000/- to the village council.** If they cannot pay the penalty amount they cannot be readmitted in their society and they cannot maintain any relation with their family members.

### **Case Study – 25: Uncle-niece marriage and consequent deprivation from parental property**

About three decades ago Mitu Nayak of Bijadi village in Deogarh district married his niece Sujani and consequent upon the marriage they were expelled from their caste council and the village also. As the rule prevailed one who marries within the Kutumba is to be expelled from the village and their respective families shall suffer excommunication. As such, Mitu's family had to bear the decision of excommunication by the village council. After some months Mitu's parents conducted necessary processes to be readmitted in their society. Mitu and his wife have been living in the village Sarankote since their marriage. Mitu has been denied rights of inheritance of parental property. However, the village council of Sarankote have provided a patch of land to Mitu for cultivation and maintenance of his livelihoods. Now he is not willing to go back to his village. Since Mitu was provided with some land

by the village council of Sarankote hence he did not make any effort to reconcile with the village council of his parental village.

#### **Case Study – 26: Marriage in Pani Achhuan Jati**

About 20 years ago, Ghairi Pradhan of Rugudakudar village eloped with a Munda girl of the same village and consequent upon their marriage Ghairi was expelled from the village. However, the Munda family raised no issue in the marriage and Ghairi was well accepted by his wife's family. However, apprehending that living with the Munda family may raise further conflicts within the village, Ghairi decided to leave the village and live elsewhere. As per rule Ghairi's family suffered from excommunication for some months, till the Dion Bandan Puja in the village occurred. During the festival the family of Ghairi conducted necessary processes, paid penalty as imposed upon him by the village council, and declared that he had severed all relation with Ghairi as son or otherwise and vowed that they would not ever entertain him in their family to be readmitted in the village. As per rule, Ghairi lost his rights to inheritance of parental property for ever. Ghairi's brothers became the successors of his parental property.

#### **Case Study – 27: Divorce implications**

This case is about Chandani Dehuri, a girl who is born and brought up in village Pacheri Pani. She was given in marriage to Jairam Pradhan, resident of Outal village. The marriage had happened in the year 2008. The couple pulled up well for some years after which regular conflicts occurred in between them which led to several dispute resolution processes at the village council level and at Pirh level. Ultimately the marriage break up happened with a mutual divorce by mediation of village elders who also remained witness to the whole sequence of disputes between the husband and wife. The marriage ended in the year 2014.

Since the divorce happened by mediation of village council the customary law in this respect was followed. Going by the provisions contained in their customary law, the husband was asked to pay Rs. 10,000/- to the wife towards her maintenance as well as for the maintenance of the 3 year old male child who is being fostered by his mother. That apart the Pirh has decided that till the child becomes 18 years of age, his father must pay yearly additional cost towards the schooling and studies of the boy. The Pirh has also given liberty to the boy to choose whether to live with father or mother after he attains 18 years of age and till then he would be in the custody of his mother. After attaining 18 years of age the boy will have right to inheritance of his father's property.

The Pirh also observed that the lady was free to decide her future course of life and she will be at liberty to marry again or live as single. Thus, under provisions of the customary law the lady married to another person of the same tribe leaving behind the child with her brother's family.

**The customary law in this context provides that on divorce matter if the Pirh is consulted at different stages of the dispute then the verdict generally goes in favour of the lady. The provisions of one time maintenance cost for her, annual maintenance cost for her children has to be borne by the father and the amount is decided at the Pirh level considering the economic status of the husband in case of a divorce. Moreover, the customary law has secured the right of inheritance of the children born out of the couple during the period of consummation of marriage.**

### **Case Study – 28: Disowning from property for illegitimate pregnancy**

Julie Nayak, aged about 18 is the daughter of Jadu Nayak of Sarankot village. Julie fell in love with a Munda boy of the same village. Munda community is regarded as Pani Achhuan community by the Paudi Bhuyan. She wanted to marry him. However, through their love meetings she got pregnant and their love affair got exposed in the community. The matter was discussed in the Pirh and Julie was offered with choices of whether she would chose to terminate relationship with the Munda boy and by that remain as a member in Paudi Bhuyan community or whether she would like to be expelled from the Bhuyan community for ever along with other consequences to her parents and family. Julie decided to remain with their forgetting all relationship with the Munda boy. She was pregnant. By the advice of the village elders she terminated her pregnancy. However, despite that she had to bear some punishment from the Pirh. Her family suffered the excommunication punishment. As per rule of the society her family had to undergo the processes for readmission in the community, paid the penalty imposed upon the family and offer a feast. Julie stayed with her parents but as per customary sanctions she stayed with her parents as a refugee without having any rights to inheritance. Had she not developed relationship with the Munda boy and had she not got pregnant out of the Munda boy she could have enjoyed all liberty to ascertain her usufructory rights on the landed property of her father. She could have also requested the village council to provide her some land otherwise. However, in the present condition she is living with her parents but working as wage labour for subsisting herself.

**The customary law is very strict against the kind of relationships that are held as incest in the community. For any mistake of the children the whole family is punished. Illegitimate pregnancy is viewed as serious violation of customary law. The woman is held responsible in case of illegitimate pregnancy and hence punished. She lives in and with the community but is deprived of admissible rights.**

### **Case Study – 29: No share of land from new clearing during excommunication duration**

This is a classic recent case of inter-community marriage that led to multiple problems for a family. Mitu Pradhan, son of Panu Pradhan of Kaladu village was working in Talcher area. He fell in love with a Munda girl there and married the girl. He brought her with him to his native village. The village council, as usual, could not accept it. With immediate effect the village council ordered excommunication in favour of Panu Pradhan's family. As such the village council also ruled that Mitu has been disowned from his parental property and can never claim share from landed property.

Panu Pradhan is a poor man and has very little landed property in his possession. He was expecting a share of land from a community owned forest clearing that was scheduled to happen in the month of February 2018. When Panu was going through the duration of excommunication the forest clearing was made. However, since he was not readmitted to the community through customary processes and practices by then he was not considered as a legitimate tenant of the village and hence he was denied for a share of land from the new clearing. For Mitu the loss was cumulative. On one hand he was disowned from his right of inheritance and on the other hand his family was deprived from the right to get a share from community land.

The customary law in this context spells that a family going through the excommunication punishment phase can have no rights on, or share from any new community asset, for example shares of land from new swidden clearing.

### **Case Study – 30: Punishment due to marriage in Mahanta (Kudumi) community**

Patel Dehuri, son of Bhajana Dehuri, resident of Baidhar Nagar village married a girl from mahanta (Kudumi) community for which the Pirh sanctioned excommunication punishment in favour of Bhajana's family. **However, in later course of time, after verification of the community identity of the girl the Pirh realized that Patel married in Mahanta community which is considered Pani Saras (acceptable) community for marital relations. Hence, Patel was not expelled from the community. However, for marrying outside the community and for lifting excommunication punishment accorded to his family the family was only penalized for Rs. 10,000/- to restore their community affiliation and rights to inheritance on the part of Patel Dehuri.**

### **Case Study – 31: Sanction of punishment for marrying in Kumbhar (Potter) caste**

Bijuli Nayak, daughter of Bijay Nayak of Jhumpura village fell in love with a Kumbhar boy of nearby village and eloped with him. They got married outside and lived as a family elsewhere and did not visit their village. The village council of Jhumpura sanctioned excommunication punishment against Bijaya Nayak along with levying a penalty amounting Rs. 5000/-. Bijay Nayak had to undergo all customary processes and practices along with payment of penalty amount, begged pardon of village council and vowed not to keep any relationship with his daughter any further, lest that the Pirh may sanction more stringent punishment.

On the other side the parental land of Narottam and his brother in Bonei area have been lying fallow and it is expected that the land will be taken over by the concerned village council and be declared as Bhogera land.

**On this matter, Bilua Nayak the Mahasardar of Battis Bar and Sardar of Palmora Pirh in Bonei area observed that their customary law has been quite simple and useful. People have the tendency to chose places where they would like to live. If one person is leaving a village and his land is taken over by village council and declared as Bhogera land then another person who migrates into that village gets the opportunity of getting part of Bhogera land. Thus, the customary law over Bhogera land provides opportunities for people to choose a village where they would prefer to live in. The Bhogera land is thus a wonderful instrument in their customary law system. If one is expelled, another is entertained.**

### **Miscellaneous matters**

#### **Case Study – 32: Customary law as applicable for multiple mistakes**

Nimai Nayak of village Kaliapal has been victim of the mistakes committed by his children. Bharat Nayak, the son of Kalia Nayak was in love with a Munda girl whom he married and brought home. When the village council got to know about it immediately they sanctioned the due punishment. The excommunication punishment was sanctioned to the family for marriage in out group. Since Munda community is considered Pani Achhuan community by Paudi Bhuyan, and Bharat had married a Munda girl so Bharat had to be expelled from the family. As per their customary law the family observed mortuary rites considering that Bharat was dead. After completion of the mortuary rites Nimai had to conduct other customary processes and practices, and pay the penalty as imposed on the family to be readmitted in the community. Bharat also had to forgo his rights on parental properties.

After some months the daughter of Nimai Nayak also committed a similar mistake. She fell in love with a boy from Pani Achhuan community and married him. This was viewed a serious offence on the part of Nimai's family for have violated the customary restrictions. Again Nimai's family suffered another phase of excommunication punishment. His daughter was expelled from their community. Nimai had to undertake the processes and practices to be readmitted in the community. He had to sever ties with his daughter forever. He also undertook that if he was ever kept any relation with his daughter then he would be punished severely as the Pirh would decide.

**The Paudi Bhuyan customary law in this context spells out that if Nimai's family commit any further mistake like any of his other sons or daughters marrying in Pani Achhuan community, or if he was found keeping relationship with any son or daughter having married in Pani Achhuan community then he would be excommunicated and expelled from the community for ever. No purification rites or payment of any level of penalty can wash away his sin. Not limited to that only, his family would be disowned from their own agricultural land and the same lands would be given to his Kutumba. If in his Kutumba no other agreed to take the property or if there are no other in the Kutumba to claim the property then the same shall be taken over by the village council and the property shall be declared as Bhogara Jami.**

#### **Case Study – 33: Punishment due to marriage in Pano community**

Mami Pradhan, daughter of Charan Pradhan resident of Rugudakudar village eloped with a Pano boy and got married. He had to face the Pirh to receive punishment. As per rule, Pirh first sanctioned excommunication in favour of the family, wanted the family to conduct death rites of the daughter for have married in Pani Achhuan community. In furtherance to that, Charan Pradhan was levied with a penalty of Rs. 4000/- for the act of violation of customary norms on the part of his daughter. Along with that Charan was cautioned by the Pirh not to keep any relation with the daughter ever after. Charan had to undergo all the customary processes and practices along with payment of the penalty amount for lifting of excommunication punishment in favour of him. He has two other daughters in adolescent age and has no sons. Hence, as per law his landed property may be inherited to the second daughter and in the case of second daughter unwilling to take the charge of father's properties the third daughter would inherit the same. However, the condition prevails that any daughter intending to live in the house of the parents can only be considered eligible to inherit parent's property. However, on the other hand if any of the two daughters get married in Pani Achhuan community then the village council may take decision to expel the family permanently from the village without any excommunication notice. If all the girls get married within own community and does not want to inherit the parental property then it would pass on to the next agnate in the male line in the Kutumba or would be taken over by the village council.

#### **Case Study – 34: Sanctions for marrying cousin and killing mother**

Cheru Pradhan, son of Subha Pradhan, resident of Purunapani village was in love with his paternal uncle's daughter. They maintained their relation very secret from others. On getting a suitable opportunity they eloped from the village and got married. Having got marriage outside the village, after two days the couple returned home. The boy's mother, apprehending punishment from the village council, reasoned with her son for violating the customary rules and wanted her son to not declare that they had been married. When his mother tried to persuade him to leave his wife and save his family



from apprehended punishment from the Pirh, the boy in a fit of rage killed his mother by an axe. All these things happened before the Pirh could take any decision on the marriage. Hence, Subha was immediately handed over to Police for have killed his mother and a case of murder was initiated against Subha. His wife had to receive many taunted remarks in the village and hence she left the village to stay with her maternal aunt in Bonei. **In this case Pirh didn't take any step to use the sanctions under customary law as constitutional law had taken its course.**

#### **Case Study – 35: Moksha from sin of cow slaughter**

Saheb Pradhan, a resident of Kaladu village is known as a good hunter of wild games by putting traps and snares. Once he had laid a trap for wild game hunting in the vicinity of Angam hill forest. However, instead of any wild game falling in the trap, a cow fell in the trap. By the next morning when Saheb Pradhan went to check if any wild game had been trapped he saw a cow was trapped and had died. The cow belonged to Hadibandhu Pradhan of the same village. Hadibandhu reported the matter to the village council and subsequently to the Pirh. The Pirh observed it a great sin and accordingly prescribed necessary action to be taken for Saheb Pradhan to attain moksha and be free from the sin of cow slaughter. As a first step towards that the Pirh ordered excommunication on the part of Saheb for three months for the sin he had committed. After three months Saheb had to do other processes to be readmitted in the caste and society. Towards that the Pirh ordered him to pay a penalty amounting Rs. 10,000/- to the village council and undertake purification rites, offer a feast to the community. Saheb had to follow all directions of Pirh strictly. The amount he paid as penalty was taken to village common fund and was utilized in the subsequent communal festivals.

#### **Case Study – 36: Elopement with other boy before scheduled marriage**

The marriage of Ranjita Pradhan, daughter of Bindhani Pradhan, resident of Jalisuan village had been fixed. The day before the marriage she eloped with a boy belonging to Bentakar Bhuyan section of the larger Bhuyan community. For this act of his daughter Bindhani faced the punishment of excommunication from the village council along with a penalty amounting Rs. 5000/- levied on him. Bindhani had to undergo all customary processes and practices along with payment of the penalty amount to be readmitted in the community. He also had to beg pardon of the village council for the so called misdeed of his daughter. **The Pirh further cautioned him that if he keeps any relation with his daughter or anybody from his family does so then he would be again punished with double the penalty amount that was imposed upon him earlier.**

#### **Leadership pattern in Paudi Bhuyan society**

Patnaik and others<sup>123</sup> have provided a detailed description on the leadership pattern in Paudi Bhuyan Society. According to them leadership in Paudi society may be classified as traditional and new or emerging leaders. A short account of different leaders has been mentioned below.

##### **Village leaders**

**Naek:** The secular head of each Paudi village is called Naek or Gauntia in the Bhuyan area of Sundargarh district and Padhan in the corresponding Bhuyan Pirh of Keonjhar district. This office was created by the ruling chiefs for administrative purposes. The Naek used to collect annual revenue from

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<sup>123</sup> Patnaik, N., Ali, A., Rout, S.P., Debi, K.B. 1979-80. Hand Book on the Paudi Bhuyan, Adibasi Special Number, Vol. XIX, Nos 1-4

the village, decide quarrels and conflicts, attend to offices during their visit to the Paudi villages. The post of the Naek is hereditary. Since the Paudi society is patriarchal the office of the Naek descends from father to the eldest son. Being the secular head the Naek plays a very important role in judicial affairs of the village. He presides over the village meetings and decides cases relating to interpersonal quarrels, breach of social customs, partition of property among cosharers and marriage proposals. In all such cases he discusses the issues with the assembled elders of the village and takes their consensus and arbitrates the matter on the basis of the collective opinion of the villagers. He serves as the chief spokesman while negotiating with the *Bandhus* regarding any marriage proposal and hands over the bride price on behalf of the groom's parents to the bride's parents. Distribution of fresh Biringa lands among the families is done by the Dehuri and Naek. In short, the Naek works as the conscience keeper of the villagers and all the villagers are expected to respect him and obey his orders.

**Dehuri:** While the Naek in the capacity of secular-head works as the intermediary between the villagers and the government authorities and external agencies, the Dehuri as the sacerdotal head acts as a link between the supernatural powers and the living beings. Being the religious head and having hailed from the senior most branch of the village, the Dehuri is respected by everyone of the village and enjoys certain privileges which are limited to contribution of free labour for a day, by the villagers, and extra share of sacrificial meat including heads of the animals sacrificed in the rituals. The village Dehuri is strictly viewed as religious head.

**Member:** the post of Member or Ward Member is a new office created after introduction of statutory panchayat in the tribal areas. Functionally the posts of Naek and the member are complementary to one another. The main differences between them are that the former is the traditional leader who is the guardian of social control, values and codes of conduct and the later is an emerging new leader who is largely concerned with the economic development and welfare of the village.

**Bhal Bhai – Village elders:** the village elders play no less important role in the socio-political arena of the village. The village elders take part actively in all discussions which are held at the Darbar of the village and their opinion is duly taken into consideration before any decision is taken finally. Any difference of opinion is sorted out and discussions are held threadbare until unanimity is reached.

### **Village council**

The village council is composed of the formal leaders such as the Naek, Dehuri, member and a group of elderly men of the village. The deliberations of the council are made at the Darbar or in the dormitory house either early morning before the villagers leave for their fields and forests or in the evening when all return home. When summoned for arbitration of any important case the council of village leaders and elders constitute the jury and the Darbar serves as an open-air court house. The Paudi Bhuyans have a set of formal leaders, but in democratic principle the real authority is vested not with the *de-facto* leaders but with the council of elders. All present in the Darbar take part in the arbitration and the decision is accepted with unanimous approval of the jury. The Naek's duty at the close of the arbitration is only to declare the verdict of the council.

The topics which come up to the village council for decision includes such matters as quarrel between co-villagers, partition of property among brothers, breach of taboos, negligence of duties of Dhangdas and Dhangdis adultery, extra-marital and socially forbidden sexual relationships, etc. The

concerned parties are summoned to the Durbar, and the party which is found guilty is fined a few measures of husked rice, goat or fowl, a few bottles of liquor and some cash. In the case of adultery, the woman may be handed over to the adultery as his co-wife. In the case of love between *bandhu* partners the girl is given in marriage to the boy with whom she has intrigued. If anybody tries to conceal his faults, it becomes necessary to detect the actual offender by oaths and ordeals. The suspected persons are asked to tell the truth by touching some earth or piece of tiger skin. It is believed that anybody telling lie by touching earth or tiger skin soon meets death and becomes a part of the earth or is killed by tiger. In serious cases the alleged person is asked to face ordeals like picking of a coin from a pot full of boiling water or holding a piece of hot iron. The fine collected from the offenders is spent in holding a feast and the liquor is sprinkled ceremonially to mitigate the conflict. The cases of land disputes between two villages, incestuous love affairs, pre marital pregnancy, witchcraft of serious nature, homicide, divorce and separation which cannot be decided at village level are referred to the council of wider territorial organization.

### **Inter-village council**

Such matters as disputes over boundary between two villages and case of divorce, which cannot be decided by one party and are not important enough to be brought to the notice of the Pirh council (council of wider territorial organization) are decided mutually by the elders of concerned villages to settle any dispute regarding village boundary, elders of neighboring villages are invited and the matter is decided by divination. In case of divorce, a delegate of village elders proceed to the girl's village and discussion is held at the Durbar. If the woman is proved to be at fault the groom's party may claim compensation for the bride wealth they paid to the girl's parents. On the other hand if the man is found guilty the woman's parents make a claim a few measures of husked rice and some amount in cash towards the maintenance of the woman during her stay with them after her separation. The formal divorce is declared jointly by both the parties after ceremonial drinking of liquor and thereafter the woman is free to marry again. But so long as the divorce is not formalized and rites connected with it not observed her husband continues to retain all the jural claims over her and may perform necessary funeral rites in case she dies in her parental village. During this period if she remarries, her legal husband may claim compensation of bride wealth from the new husband. Cases of separation are also likewise discussed between the elders of both the villages and the girl is advised to go back to her husband and lead her family life.

### **Bar organization or Pirh council**

For judicial purposes the Paudi villages are grouped under a wider territorial organization called Bar. A Bar may consist of three or more villages to decide socio-political affairs which cannot be settled at the village level. In the Sundargarh district there are Tinkhandia Bar consisting of three villages, Satkhandia Bar having seven villages, Battiskhandia Bar with thirty-two villages under its jurisdiction and other Bars like Modani Bar, Majuri Bar, Nadirsepari Bar etc. the last three Bars taken together constitute a still bigger socio-political organization called Panchasaghar (500 houses). The Bar is also designated as Pirh and the council held by the Bar is thus called Pirh council. Each Pirh or Bar has its own tutelary deity worshipped on the occasion of Pirh Jatal Puja.

Serious offences affecting the Paudi Bhuyan life such as violation of incest taboos, adultery, homicide, case of woman dying of labour pain, killing cow and marriage outside the tribe, witchcraft, sorcery of

serious nature, disposal of property of heirless Paudi cannot be decided at village level and are therefore referred to the Pirh council. The Pirh council also meets to readmit the excommunicated person after performing proper purificatory rites. Circumstances which lead to excommunication of a person is the formation of worms in a wound, admission into hospital for medical treatment and imprisonment in a jail. It may be mentioned that hospitalization and imprisonment are by themselves not causes of outcasting. The real cause of excommunication is eating food from hands of person of low castes.

Each Pirh has its public functionaries who are allotted specific duties to perform when it is in session. The name of the office and their function are as follows.

**Bhal Bhai:** Elderly persons delegated from each village to participate in the deliberation of Pirh council and offer their opinion in deciding case.

**Pirh Bhandari (Barber):** He shaves the head of the offender. Ordinarily Paudi Bhuyans do not employ the service of a barber and they shave their own heads.

**Dhoba, Behera or Washerman by Caste:** He washes the clothes of the offender on the day of the Pirh council. Ordinarily, the Paudi Bhuyans wash their own cloth. But on occasion like birth, death and Pirh council the clothes are washed by a washerman for ceremonial purification.

**Pirh Naek or Jatibehera:** His duty is to perform the purificatory rites by sprinkling diluted cow dung water and cow urine on the head of the offender. He also eats the first morsel of cooked food touched by the offender.

**Dalbehera:** He acts as a treasurer. The fine collected in cash is kept with him is to be used during the Pirh council.

**Ghadei:** He is the messenger cum errand man whose duty is to inform the date and the place of the Pirh council to all the villages so that all may assemble on the appointed date. It is also his duty to intimate the date of Pirh Jatal Puja to all the villagers concerned.

**Pirh Brahman:** Coming in contact with the non-tribals the Paudi Bhuyans now seek the service of a Brahmin priest in Pirh council to purify the offender. After the culprit undergoes the traditional rites and rituals to purify him the Brahmin burns some ghee to mark the final purification.

The Pirh council is held in the village of the offender. After the case is detected the Naek and Dehuri of the village of the offender first call a meeting and sit down for a preliminary trial of the case. The offender is fined a few measures of husked rice, some amount of money and a goat. These are kept in the common stock of the village to be used for feeding the Pirh people on the day of the Pirh council.

### **Changing scenario**

With the changing pattern of life, the rigid structures enforced by the tribal council have been relaxed to a great extent. The rules and regulations of the traditional political organization are not strictly adhered to and the Bhuyans have become more liberal in their outlook. People of younger generation who are change prone are more in number than those of older generation. All these factors have combined to weaken the social fabric, cultural tradition and so the customary law of the Paudi Bhuyan community and therefore breaches of social rules and convictions do not concern them much in the changed context.

## **Codification of Paudi Bhuyan Customary Law**

**Translated version of Resolution of Paudi Bhuyan State level body on rules for all**

**PAHADI BHUYAN SAMAJ, ODISHA**

**Place: Tentula (Kadamdihi), Date: 01/03/2011**

Today i.e. dated 01/03/2011 Tuesday the Pahadi Bhuyan Maha Samaj meeting was conducted at Kadamdihi of village Tentula. Sri Ratnakar Giri of village Sibida presided over the meeting. In this meeting the Pahadi Bhuyan representatives and social workers from the Pahadi Bhuyan dominated districts such as Sundargarh, Kendujhar, Anugul and Deogarh participated. In the meeting topics related to Pahadi Bhuyan overall development including educational development was discussed in detail. It was decided to form a State Level Social Committee of the community. From today onwards the committee will be known as Pahadi Bhuyan Maha Samaj, Odisha.

It was democratically decided to open a joint account at UCO bank, Pallahada on the name of the President and Secretary for financial transactions of the Society.

... (Names of representatives)

Resolution : 1

Discussions were made on making common social rules for all Pahadi Bhuyan areas in different districts. By consensus on the matter the detailed social rules were prepared and approved as below.

1. After seven days of child birth when the umbilical cord of the child falls the family will have to give clothes to the washerman.
2. When the child becomes 21 days old Ekoisia ritual will be conducted. The parents shall offer a community feast including the washerman and barber families.
3. The child should be enrolled in the Anganwadi Center when she/he becomes 3 years old.
4. The child should be enrolled in the School when she/he becomes 5 years old.
5. Marriage can happen after a boy attains 20 years of age and girl attains 18 years of age.
6. First the boy will visit the girl's place. If he finds the girl suitable then he would go back and arrange to send a formal proposal to the girl's parents. Not more than 5 people can go to the girl's house for bridal selection. If the rule is violated, penalty amounting Rs. 1000/- shall be levied.
  - a) Old women will go for bridal selection. While going there they must carry eateries like cakes, puffed rice, ripe banana or other sweets for the prospective bride. Not more than 5 can go there.
  - b) Two village folks as witnesses shall accompany the father/ uncle and other relations of the prospective groom while going for bride selection.
7. For selection of groom 5 people can go. Father of the groom shall offer 5 pieces of clothes. If demand is made for more clothes then a penalty of Rs.1000/- shall be imposed.
8. For fixture of marriage, puffed rice, sweets, coconut, banana and such things should be carried. For fixture maximum 15 people can go. If more than 15 people goes then a fine amounting Rs.1000/- shall be charged. On the scheduled day of marriage fixture the bride's household shall offer one meal to the visitors.

9. With 2 pieces of 'Guapita' dhoti 7 people will go. Each side (bride and groom) shall give one dhoti each. If more than 7 people go then a fine of Rs. 1000/- will be charged.  
On the day of marriage, the groom's side shall bear the expenses on feast by the bride's side. Demand for non-vegetarian dishes shall not be entertained. Non-vegetarian dishes can be served after the bride is escorted to the groom's home.
10. The groom's side shall bear expenses of rice and meat for the feast. The feast should be well organized before arrival of the bride's side.
11. After marriage when the bride and groom return to groom's house, maximum five persons should accompany them.
12. Demand for dowry strictly prohibited. One will have to be happy with whatever is comes as dowry.
13. Death rite (Shuddha kriya) – Dasha on 10<sup>th</sup> day, suddha on 11<sup>th</sup> day. Only one meal will be cooked per day. Alcohol prohibited.
14. Killing wife, killing embryo – 20 kg of rice, one goat, one fowl, an amount of Rs. 100/- as penalty. In addition to that tips to washer man, priest and barber, and feast to them with one fowl with earthen pot for cooking on a new hearth. The culprits head shall be shaved and will be purified with cow dung, tulsi leaves, bel leaves, doob grass, copper coin, *paduka pani*. The culprit shall take *paduka pani* seven times and donate one dhoti to priest.
15. Cow slaughtering – same as in para 14
16. If wife beats husband – As punishment one goat, one fowl, rice 20 kg, spices as required will have to be borne by the accused. In addition to that fine amounting Rs. 5000/- will be charged.
17. Beating to husband's elder brother or beating younger brother's wife – Fine amounting Rs. 7000/-
18. Machhia Pataka – Ritual to be conducted involving washer man, barber, priest witnessed by village council representatives.
19. If a girl marries outside the caste but within the Pani chuan (acceptable) community – Fine amounting Rs. 5000/-, community feast with one he goat, rice 5 khandi, and other requirements.
20. Panichhuan Pua (groom from acceptable community) – If marries outside caste shall be fined as per para 19. If marries outside Pani Chhuan community then their (groom or bride) death ritual shall be conducted. If it's boy who married in unacceptable community then his parents will be excommunicated. They can be readmitted on payment of penalty amounting Rs. 10,000/-, one he goat, two fowls, one pair dhoti, rice 5 khandi, and other requisites for community feast. If girl married in unacceptable community, the girl's father shall be fined for Rs. 5000/-. If after marriage the girl entered her paternal house then her parents will be fined for Rs. 10,000/- and along with that the girl's father shall have to conduct death rites of his daughter.
21. Paternal uncle and niece marriage: They cannot live in Bhuyan society. They may live with any other community.
22. During Raja Parba the Doli Geeta may be sung for seven days. Beyond seven days the boys' group and girls's group shall be fined for Rs. 1000/- each.
23. The Changu Badya tradition would continue.

24. In case of love marriage, if a girl marries by her choice in community then the new couple would sponsor a community feast. If they violate the rule of the village then the Bhuyan society shall penalize them. They will have to bear the cost of a he goat, one fowl, 5 kg of dal and other spices towards the penalty.
25. In case of marriage by capture – the penalty amount is Rs. 10000/- and a he goat. The fellow members who helped the boy in the marriage by capture shall have to pay penalty of Rs. 1000/- each.
26. Bandhana Bhoji – Whether boy or girl they should be freed by the Teladia village. If they violate the law then they will be penalized.
27. Until the Teladia ritual is done no father can get his son married. The son will also be forbidden to go to the site of worship.
28. In the above case the groom's side shall have to give a he goat (Pitru boda) to the bride's family.
29. In case of a negotiation marriage if the girl deny the marriage after fixture or elopes with any other boy before marriage then the girl's father shall have to pay Rs. 5000/- to the boy's father. That apart, one he goat, rice 5 khandi, and other spices and requisites are to be borne by the girl's father.
30. In case of widow marriage – The interested man may get the widow for marriage after paying rice 1 Khandi and 1 he goat to the father-in-law of the widow.
31. In case of marriage of an abandoned woman – The man who intends to marry the woman shall have to comply the rule as in para 30.

If anybody grossly violates the rules as above will be penalized with Rs. 20,000/-

At the end, the secretary thanked all and the meeting ended

President

Bhuyan Samaj

Sundargarh, Deogarh, Angul, Kendujhar

Secretary

Bhuyan Samaj

Sundargarh, Deogarh, Angul, Kendujhar

**Table: 13**

**List of Pirh in Bhuyan Khanda (in different districts)**

<b>Name of District</b>	<b>Sundargarh</b>	<b>Keonjhar</b>	<b>Deogarh</b>
<b>Name of Bar</b>	Batis Bar	Sri Sarakhanda Pirh	Maa Ramadevi Pirh
	Palmara Bar	Charigaon Pirh	
	Dadan Bar	Panchapada Pirh	
	Parbata Khanda	Atas Pirh	
	Panchakhanda Khanda	Jharkhand/ Dreng Pirh	
	Bara ghara Bar	Panchnayik Pirh	
	Lagam Bar		



## Chapter -6

### **Statutory law in relation to tribal customary law of land governance**

The previous chapters dealt with the various ways in which the Dongaria Kandha and the Paudi Bhuyan communities administer their indigenous justice systems as applies to land tenure and inheritance of landed properties both at community level and individual or family level. The various case studies indicated the different contexts in which the customary law is spelt out. The communities have their systems of resolving disputes on land matters like land inheritance, transfer, transactions like selling, buying, mortgaging, allocation and disowning from property, community ownership of land, land pooling and traditional methods of land distribution. While in the case of Paudi Bhuyan community the Pirh at various levels act as courts for dispute resolution, in the case of Dongaria Kandha the court of law is organized at mutha and mandala level. The village council receives the first appeal and some minor cases are settled at village level and those that are not settled at village level proceeds to the Pirh or Mutha/Mandala as the case may be in respect of the tribes.

One remarkable common feature in the case of both the tribes is that, as per their customary law, the land is primarily owned by the community at village level. This has been the case from time immemorial. With the setting up of a settlement the village community acquires optimum extent of land available around and defines the village boundary. Within the village boundary come different kinds of land such as agricultural land, common land, trees and forests, streams and rivers, and other natural land features including spaces for their religious activities, installation of deities, sacred groves and cremation ground. The village council maintains supremacy over the land acquired by village and the lands are called communal land, known by various local denominations.

As is found from discussions with the senior members of Dongaria Kandha and the Paudi Bhuyan communities, sufficed by cases, there were norms and rules governing distribution of communal land to individuals and families. The distribution of land has been by and large decided looking at the availability of able family members at the household level. In early times when the land to man ratio was favourable there were not many restrictions about acquiring of lands by individuals. However, it was always considered that in a given patch all the families should have a proper share of land to cultivate and use the other common pool resources equally. One always had the liberty to acquire some extra land beyond a given patch, within limits of the village boundary, if the family had adequate labour to convert the forest lands to agricultural lands. Such relaxations at the village community level may have resulted in proportionate acquiring of land and keeping it under individual/family possession. Hardly there were circumstances where a family or individual had acquired land disproportionate to his family or for purposes of acquiring enough land asset with the hidden desire to sell or mortgage or lease out the land to others in course of time. Thus, in the land distribution pattern sort of equity was maintained within the community and households.

On the land matters of the tribes the 'village or the village council' comes first as owner of the lands. After the formation of the state and subsequent emergence of revenue laws the customary laws of the

tribal communities have undergone changes, amendments, modifications at their socio-political level. Such changes have hardly been documented or codified unlike the amendments and modifications of revenue laws. However, subsequent to the formation and ratification of revenue laws in the state it has been observed that the tribal customary laws of setting villages and acquiring land has been considered and respected. The major land settlement reports are testimony to that. During the settlement processes, over different times, the *de-facto* ownership of land by village councils have been considered, legitimized and recorded. The land acquired by a village community may have been categorized under different denominations in revenue records and may have been rationalized in different contexts but, at least, the land area of village has been determined and recorded in government records during the settlement processes. In this connection it is worthwhile to review the revenue law of the state providing for an understanding on the land ownership by 'village', as per definition and implications by revenue laws of the state, and how well the customary laws and systems fits into that.

### **Legal meaning of Village as per various Revenue Laws**

With reference to **Orissa Tenancy Act, 1913**, the Sec. 3 (25) 'Village' is meant as the area defined, surveyed and recorded as a distinct and separate village in-

- (a) The general land revenue survey which has been made of the province of Bengal, or
- (b) any survey made by the government which may be adopted any notification in the official Gazette as defining villages for the purpose of this Clause in any specified area, and,
- (c) Where a survey has not been made, by, or under the authority of, the Government, "village" means such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.

Further, as per **Survey and Settlement Act, 1958**, Sec. 2 (14) deals "Village" means **any tract of land which has been recognized as a village in the revenue records** or which the Board of Revenue may, from time to time, declare to be a village.

**As per Orissa Gram Panchayat Act 1964, Sec. 2 (u)"Village" means any area recorded as a village in the revenue records of the district in which it is situated and in the absence of such records any area as the Collector of the district may from time to time declare to be a village for the purpose of this Act.**

**As per O.C.H. & P.F.L. Act 1972, Sec.2 (v) "Village means any tract of land which has been recognized as a village in the revenue records or which the Board of Revenue may, from time to time, declare to be a village or which has been constituted as such under sub-section (4) of Section 7.**

**Sec. 7 (4)- Notwithstanding anything contained in any other law for the time being in force, the Director of Consolidation shall have power to effect changes in the boundary of an existing village and to constitute a new village.**

With reference to above, it may be stated that long before the coming up of the State law defining 'village' the villages had been set up. The villages which had not been settled by the time of coming up of the Acts were later on recognized as villages after settlement operation in the State. During courses

of various settlement operations the local 'custom' was being given due importance. Thus, the customary village boundary was considered during settlement processes.

In his final report W.W. Dalziel<sup>124</sup> stated at point 8 that 'The variety in the classes of estates in Orissa made the settlement one of great interest but complicated. There are, khas mahal, temporarily settled estates, permanently settled villages, and revenue-free estates. Complications arise from the fact-that in many respects the Tenancy Act makes different provisions for the temporarily-settled estates and those which are not temporarily settled. To give only one example in the former the rights of transfer of occupancy rights are laid down, and in the latter **they are governed by custom, and the custom varies from estate to-estate**. Thus the rules had, in regard to several matters, to make one set of provisions for the temporarily settled estates, and another set for the revenue-free estates mixed up in them and for the permanently settled estates. Some points in which amendment of the Orissa Tenancy Act is desirable are mentioned at the end of this review'.

The tribal villages kept on exercising their sovereign rights within the customary boundary of the village. Each village had their own customary boundary which the neighboring villages respected too. In the villages of the tribes studied village boundary disputes have been scarce, if there had been any, they have been resolved and settled since long ago. Once recognized as a village in government records the rights of the tribals over the natural resources have been constitutionally authenticated by the Central Act PESA Act that came into force on the 24<sup>th</sup> December 1996. The Act intends to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. **PESA is unprecedented in that it gives radical self-governance powers to the tribal community and recognizes its traditional community rights over natural resources.** By recognizing tribal self-governance and community rights over resources PESA provided legal legitimacy for customary rights.

It is however, important to look at the history of land settlements in the areas of the studied tribal communities which provides a clear understanding that during the settlement operations the tribal customary rules were referred to. In a way, in accordance with their customary rules of ownership over land, the individual or private land settlement had been done. The settlement processes undertaken during the pre and post independence era has given due consideration to the customary rules and the settlements had been undertaken in consultation with the traditional tribal council at the village level and inter-village level.

### **History of land settlement in Koraput Region**

The land issue of the tribals of erstwhile undivided Koraput is complex, the result of centuries-old negligence of the revenue administration. In order to understand the present land issue of the region there is need to understand the history of Koraput & land revenue administration background from the Kings/Zamindars to the present political regime.

The tribe Dongaria Kandha is inhabitants of Rayagada district that was part of erstwhile Koraput district. The history of Dongaria Kandha land tenure system thus may be studied from history of Koraput. The undivided Koraput was former hill country of Jeypore. The history of the land is the

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<sup>124</sup> Final Report on the Revision settlement of Orissa (1922-1932AD) by W.W. Dalziel, I.C.S, Settlement Officer, Orissa, p2

history of the hill tribes who have made it their home. As per Mr. W. Francis (Vizagapatnam District Gazetteer, 1907), there is no doubt that the earliest inhabitants were the wild Kolarian tribes which still inhabit the hilliest parts of the district. Later to arrive were the tribes of Dravidian origin, and particularly the Kondhas." There is some inscription that shows some evidence of the existence of a kingdom from the year A.D.1061 in the region. There is also historical evidence of a kingdom in the fourteenth and fifteenth centuries.

From the fifteenth century until the British period a line of kings/ zamindars ruled in the area. Historians have opined that the king originated from the Solar Race; a general and feudal king of Kashmir. Another account of the origin of the Jeypore house is given by Mr. Oram in the Circuit Committee's report of 1784: the raja of Jeypore is descended from a Rajha, formerly a servant of ancient king of Jagarnath. There are also other theories. However, the kings were from the other region and ruled the area for centuries. The local inhabitants including the tribal communities remained subservient to the kings and zamindars and there were systems of cess or tax to be paid to the kings and zamindars in order to utilize the land and forest for bonafide requirement and survival strategies.

### **The land revenue administration during British period**

The land revenue administration was the ancient feudal system. As there was no survey or settlement of land during the Rajha period, it was not possible to know the exact or approximate extent of land held or possessed by the Ryot. The extent was calculated in terms of yoke or seed capacity. **The lands were administered partly by Roytwari system and partly on village system called Mustajari.** In the roytwari system there was agreement between the land lords and tenants; there was a register of each village and Amin or villagers were appointed by the estate as the revenue Naik. There were very few villages under this system.

**The mustajari system is almost the same as Gaontii system of tenure in Sambalpur. The mustajair is an agent for the collection of rent, remunerated either by a grant of a piece of free land or percentage of the collections. The office was hereditary and normally held by an influential person in the village. The mustajaris are not required to keep any account of records of the holdings in village.** As the king was from the coastal plains, there were many coastal people working for him to perform different services like revenue collection, defense, and religious rituals. The majority of the amins and mustajaris were not tribal people. There was exploitation by the amins and mustajairs which forced many tribals to be displaced from their land, going deeper into the dense forest. The inhuman system of Goti/ Bethi was prevalent at that time. There was also the system of Dana/mokhasa. Dana (grants) are made for religious purposes, other services or domestic duties of Raja. There were large extents of land for this purpose.

The only interest of the British was to collect revenue from land and exploit the forest resources. In order to increase the land revenue they introduced many Acts but there was no attempt to simplify the land revenue system. Under the terms of the permanent settlement of the British, the feudal estate was more powerful and the feudal system was reinforced. With the increase in rent imposed by the British there was more pressure on the tribal tenants to pay more rent. There was also statutory concession, granted to the privileged classes of people regarding the use of timber and forest materials under the Jeypore forest rules and also privileges extended to them by the estate in 1921. The Madras Estate land Act which governed the relationship between the land holder and the tenant came into force in

the district from the 1<sup>st</sup> July 1908 but it was not at all helpful for the tenants. **As far the rights over land was concerned, the British rule did not attempt to become the arbiter of any such rights, nor did it intend to set up any principles for their determination.**

There was one important enactment during 1917. The Agency Tracts Interest and Land Transfer Act, implemented since 14<sup>th</sup> August 1917, was kind of designed to safeguard the interests of adivasis. This was passed with a view to preventing transfer of lands from adivasis to non-adivasis, which was taking place rapidly in the area. However, the bulk of the transfers in the district had already taken place before this act was passed. **As per the final report on the major settlement operations in Koraput district 1938 to 1964, "people could not take advantage of the passing of this Act as they were uneducated and ignorant, even transfers made after the date.** The estate officials remained completely indifferent in the matter and muted the names of the transferees in the estate records. This left practically no documentary evidence for proving transfer of the lands of adivasis to non-adivasis. Further, this Act did not affect the relinquishment of land by adivasis in favour of the land holder. So in several cases the Act was dodged by the adivasis relinquishing his lands in favour of Jaypore estate and the shrewd non-adivasi transferees in obtaining the same from the estate employees.<sup>125</sup>

The area was first treated as backward tract under the Government of India, Act 1919 and **in the 1935 Act it was classed as a partially excluded area.** In spite of all these Acts, the commercial despot and the imperialistic ambitions were prominent. As a result the life of tribals became worse.

A new chapter in the history of Jaypore country was began when the district of Koraput was formed and incorporated in the new Orissa province on 1<sup>st</sup> April 1936. **For the first time in 1938 there was a survey and record of rights operations carried out in the district in small scale.** The operation was suddenly suspended due to the world war of 1939 to 1945 then resumed in 1947 but priority was given to developing the area.

### **In independent India**

After independence the survey settlement process started from the year 1951 and continued up to 1964. **The Government of Orissa adopted the plain table method of survey of Bihar and Orissa pattern against the chain survey method followed in Ganjam, the former being less costly. But the plain table survey method became very costly for the tribals as hill slopes greater than 9% slope (their traditional agriculture land) are not recorded in their name due to unsuitable technique.** The proportion of private land of the area in Koraput district is 20%, in Malkangiri 19%, in Nabarangpur 30 % and in Raygada 20%. Out of this private land, the present composition is that around 30 % of the population (the majority non tribals) have the 70 % of the total private land. The existing *amins*, *mustajars*, *inamdars*, landlords and feudal heads recorded the majority of land in their name because of their proximity to the surveyors and better knowledge. Again, tribals became marginalized because of their lack of knowledge and shy nature<sup>126</sup>.

The initial euphoria of independence melted down very soon as there was no end of exploitation of tribals by the powerful people. The issue of land again cropped up in the area in different form with uprisings, some violent and some are non violent.

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<sup>125</sup> Personal communication with Bidyut Mohanty, Director Spread, Koraput

<sup>126</sup> Personal communication with Bidyut Mohanty

The British occupied the undivided Koraput district in 1863 and did not take much interest in the land of the district. The district followed similar pattern of land policy as prevalent in Madras Estate land act, 1908 largely influenced it. The Government only initiated land record right during 1940. The tribals of Koraput district being induced by money lenders and other non tribal people alienated their land holdings at cheaper prices. In spite of the promulgation of Agency Tracts Interest and Land Transfer Act, 1917 its effect in the Agency tracts was not satisfactory and the extent of land alienation of tribal was not reduced. This Act has been amended by the Government of Madras presidency in 1918, 1927, 1931 and 1932. This was also amended by Government of Orissa in 1943. Prior to the enforcement of the regulation 2, 1956 in Koraput the agency Tracts Interest and land transfer Act, 1917 was enforced.

After the creation of Orissa, the Government ordered a survey and record of rights operation in 1938 in Koraput region. The operation was suspended during the war emergency and was revived thereafter. It was concluded in 1964 in the Koraput region. After that there is no fresh survey and settlement done for the area. The result of the settlement was that in accordance to the survey method followed land holdings located within 9% slope could be settled as private lands. Noteworthy that the tribals of the region were having dwelling on hills and cultivating on the hill slopes, in majority of cases on slopes up to and above 30%. It is clear that most of the private lands, distributed to the tenants by village councils, could not be settled in favour of the tenants. Thus, the customary law related to the traditional land ownership pattern considering the village council as the sole owner of the unsettled lands prevailed and was respected by the members of the communities. Thus, even after the major settlement the lands under possession of a family through generations which did not fall under the 9% slope zone is being governed by the village councils through the prevailing customary laws in that direction. It may be stated that the *de-facto* owner of the unsettled individual/family possessions is the village council while the *de-jure* owner of such lands is the government. The tribal people may not need a record of rights in their favour as long as the government does not interfere in their customary systems.

### **The unsuitable method of survey & denial of land rights to people of Koraput region**

Sri. N. C Behuria, the then survey and settlement officer for major survey in Koraput district has pointed out in his settlement report that **“though the plane-table method of cadastral survey which has replaced the earlier chain- survey method was much cheaper, it was unsuitable for hilly terrain.”** In this method the details of land use beyond 10 per cent cannot be correctly recorded. **Apart from the constraint of technical nature imposed by the method of survey in the matter of correct measure of land, there was policy decision of govt. as a result of which the preparation of record of rights turned in to denial of rights above the 10 percent, which were enjoyed by the concerned population for generations. The plots above 10' slopes were kept as Hill blocks divided into Ac. 40 patches and assigning different plot numbers for each patch and included in government khata. These plots are imaginary plots and un-surveyed area. Till today there is no attempt from government to survey these Hill slope above the 10' slope of the high hills which is the main source of earning of many tribal people.** In this process the tribals have been losing their constitutional rights on the land cultivated from generations together although in many ways their customary rights are maintained intact through their socio-political systems and customary laws..

As discussed, the **survey and settlement was done under the Madras Estate Land Act (MELA) and the entire village site was recorded as “Gram kantha Parmbok” category where there is no individual ownership of land on the homestead land.** The system is continuing still.

As a result of this complicated land laws, the tribal people have been deprived of getting their legitimate ownership over possessed land. The records of rights are basic documents concerning lands which play an important role in the matter of transactions and compensation. But absence of correct and up dated land records is a great handicap for proper transactions and calculation of compensation, in case of displacement. The customary law going in their favour may not happen to be a gainful alternative in anyways.

### **Land tenure system in former princely states of Gangpur, Bonai and Bamra**

Historical accounts on land administration and tenure systems in the Paudi Bhuyan areas under present Sundargarh and Deogarh districts have found mention in the gazetteers of Sundargarh district and the erstwhile Sambalpur district. While the history of land revenue system in Sundargarh district describes the systems that were in vogue in the princely states of Gangpur and Bonai while the same for Deogarh relates to the princely state Bamra, coming under the erstwhile Sambalpur district.

The former princely States of Gangpur and Bonai constitute the present District of Sundargarh. In these two ex-States there were estate holders who were known by different names, Viz., Zamindar, Jagirdar, Kharposhdar and Pragandar. Besides, commensurate with the feudal order various service tenures were also in vogue which kept in such tenure holder in the State of semi-slavery. With the merger of the feudatory States of Odisha with Odisha province on the 1<sup>st</sup> January, 1934, and the subsequent abolition of all intermediary interest in land the age long feudal rule in the area came to an end and direct contact between the Government and the tenants was established. **The abolition of the intermediary system brought in a rational system of land revenue collection and cultivators were assured of their right over the land they cultivated.**

L.E.B. Cobden-Ramsay mentions in fair detail in the ‘Feudatory States of Odisha’ in “Bengal Gazetteers” published in 1910 (page 89-90 and 122-125) that Bamra State was almost covered by dense forest and hilly tract. The land revenue was a very simple one and was practically homogeneous throughout the State. Ownership in the land rested with the State, but the right of occupancy rested with the actual cultivator who, so long as he paid his rents, was left in undisturbed possession. Alienation by sale, gift or mortgage by a tenant of his holding was illegal, and subjected both the transfer and transferee to unconditional ejection and eviction. Such alienation was strictly prohibited and disallowed in Bamra State. Only this could be done with the due permission and only after close scrutiny by the king. **The Kandha and, Bhuyan tribe claimed to be the real owners of the soil and when asked, “Who are you?”. The answer invariably given, however humble in origin and position the member of these races may be was, “I am a zamindar”, or owner of the soil.** The ‘wild’ non-Hinduised Kandha had never consented to pay a regular land revenue. Bamra State formerly known as the Tributary Mahals of Odisha (Cobden-Ramsay’s spelling which has since been changed to Odisha), settlements were made by means of a local standard measuring pole known as ‘*dusti padika*’ and a rough classification of the soil, or on an approximate estimate of the produce of the land. In Bamra State regular settlements have been made for many years past and the measurements recorded in acres. The periods of land settlements were generally for 10 to 15 years. The rents were

mostly paid in cash and additional contributions at fixed rates, usually of rice, grain, ghee and live-stocks like cow, goats were levied on the occasions of certain festivals of the State. These payments in kind were commuted to cash payments and the tenants had the option of paying the value in cash if they so desired. In the case of villages held by *Lakhirajdars* the tenants usually cultivated on the *bhaga* principle, or half division of the produce, in most of the villages supplies (*rasad*) were given free to the king and his officials on tour, and this supply was regarded as part of the revenue. The system of providing 'begari' or free labour, in return for daily feeding was also a revenue asset.

The land revenue demand was divided into fixed and fluctuating collections. **The fluctuating collections were derived from new villages opened up and waste lands brought to cultivation.** The rule is that new lands are generally allowed to be held five years free of rent. This collection also includes the assessment on 'dahi' (shifting cultivation in forest area by the slash and burn method causing immense destruction and depletion of forest). The area under 'dahi' was measured by the Forest Department and the rate charged was Re. 1-9 *anna* per man which by land measure was about half an acre. The Pauri or hill-man were the people who practised this form of cultivation. The king was trying to localize and keep within prescribed limits this reckless and wasteful form of cultivation by compelling the Paurias to apply for sanction for any area they burnt and this was then checked by the Forest Department.

The villages in the state were held by Gountias, Pradhans and Gadtias. No distinction is made between the first two classes. **The 'Bhogara' lands used by the village headman varied from 12 to 20.5 percent of the cultivated lands of the village.** Rakumat or payment in kisti was levied on all villages, except from Lakhraji and Brahmotar villages. It was regularly assessed and was entered up in detail in the Kistibandi (Demand Register). The payment was made into the State granary (Royalty 'dhana') in kind such as grains and other edible items like paddy (dhana), rice (chaul), black-gram (muga, birhi), sesame seed (til) and clarified-butter (ghee), etc. The State forests or the reserve forest was separated from the village or khasra jungle. There were ten protected trees i.e. Sal, Bija, Khaira, Bandhan, Harar, Mahul, Kurum, Kendu, Kusum and Sisu. As regards the khasra jungle, the villagers were allowed to use it but were not allowed to destroy it for whatsoever reason and the prohibited class of trees could not be cut from the khasra forest without adequate reason and without permission of the Forest Department. The cultivators paid a commutation fee to cut and remove any kind of timber, except the prohibited class.

As regards destruction of the forests by the people, the measures adopted were effective, and it was but rarely that instances were seen of clearing of patches of forest with trees ringed and boles burnt for raising crops on guda or dry upland. All persons, whether are people of the State or outsiders, paid a grazing tax if they keep milch-cattle; different rates for insiders and outsiders.

No regular system of Settlement operation was made in Bamara till 1877 and the rents were fixed by appraisement of harvest. The last regular settlement was completed during 1928-29. The two Sub-Divisions of Deogarh and Kuchinda which constituted the ex-State of Bamara are governed by the Bamara Revenue Rules of 1928-29. In this settlement the tenants have been recorded as having occupancy rights and the Gountias acted as revenue collecting agents. Another minor settlement was undertaken during the period 1941 to 1947 for assessment of rent in respect of newly reclaimed land.



The villages are classified into Six categories i.e. (1) Ruler's Khamar Villages, (2) Khorposh villages, (3) Daan Villages consisting of 37 villages which were leased out to late Dambarudhar Priya Debi (4) Brahmottar and Debottar villages, (5) Gounti villages and (6) Patwari managed villages.

**Regular survey and settlement were made lately in the State. The measurement was usually done roughly by bamboo poles,** and rent being supposed to bear some relation to outturn, but the mode of calculation was often very crude. Before the settlement of 1877, made by Colonel (then captain) Sir James Johnstone, Government Agent, after the rebellion in 1868 there appears to have been no fixed revenue levied from family of community Bhuyans. A house tax of four anna per house and eight annas per plough was then imposed. A school-fee of one anna per house was also imposed. The next settlement was made by Mr. H. P. Wylly, Government Agent, after the rebellion of 1893. The rates were fixed at thirteen annas per plough, six and a half annas per house and the school tax was doubled. On those villages, which objected to the thatching duties, a further tax of three annas was levied. **Printed Pattas or leases were given to the headman.**

### **Recent Settlement Operation**

In preparing the record-of-rights during the currency of the settlement operations, the provisions of the following laws and regulation passed and enacted from time to time since the merger of the States are taken into consideration. They are mainly;

The Odisha Merged State (Laws) Act, 1950; The Odisha Estate Abolition Act, 1951; The Odisha Private Lands of Rulers- Assessment of Rent Act, 1958; The Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe) Regulation, 1956; The Bhoodan Yagna Act, 1953; The Odisha Land Reforms Act, 1960; The Odisha Offices of Village Police (Abolition) Act 1964; The Odisha Merged Territories (Village Offices Abolition) Act, 1963.

### **Land Reforms Followed After the Merger of the States**

It was after the merger of the ex-States with Odisha, the Central Government issued an order called the Odisha States (Application of Laws) Order, 1948, applying a number of enactments to the ex-States on the subjects included in the central list. Besides, the Odisha Government also issued an order called the Administration of Odisha States Order, 1948, extending a number of State Acts for carrying out the administration of these areas in respect of the remaining subjects. **In this order substantial and far reaching tenancy reforms were enacted giving free rights of transfer, full rights over trees standing on the tenants holding, protection against increase of rent and against ejection of occupancy tenants and Sukhabasis, notwithstanding anything contained in the tenancy laws of the ex-States.** Besides, some rights were conferred on Jagir holders and cultivators of Khamar lands. This modification of existing tenancy right by the Administration of Odisha States Order, 1948, which was repeated in the Merged States (Laws) Act, 1950, was an event of far reaching consequence.

**The first phase of land reforms affording protection to tenants thus started from 1948 with the enforcement of the above orders. The Odisha Tenants Protection Act, 1948, also made provision for protection of tenants' rights.** Subsequently the Odisha Tenants Relief Act, 1948, was enacted repealing the Odisha Tenants Protection Act, 1948. According to the Odisha Tenants Relief Act 1955, **no tenants in lawful cultivation were to be evicted from such land by the landlord.**

The enactment of the Odisha Estates Abolition Act, 1951 introduced further land reforms by eliminating intermediary interests. The primary purpose of the Act was to abolish all intermediaries existing between the estates and the raiyats and after eliminating all the intermediary interests to bring the raiyats or the actual occupants of land in direct contact with the Government. The Act further provided for release of the service tenure holders from the obligation of rendering serviced and conferring occupancy status on them in respect of the land under their occupation.

After these initial steps, came the **Odisha Land Reforms Act (OLR), 1960**, the objectives of which are:

- a) Conferment of rights of ownership on the tiller,
- b) Security of tenure and fixing of reasonable rent so that the right of ownership became effective
- c) Fixation of ceiling on holdings in order to avoid concentration of land in the hands of a few cultivators.

The Act was subsequently amended by the Odisha Land Reforms (Amendment) Acts, 1965 and 1974. Under the amended Acts, no person shall hold land as landholder of raiyot under personal cultivation in excess of the ceiling area equivalent to 10 standard acres. A standard acre means the unit of measurement of land equivalent to one acres of class I land or one and one half acres of class II land or three acres of class III land or four and one-half acres of class IV land. Thus according to law a person (which includes a company or association or other body of individuals, whether incorporated or not ; and any institution capable of lands, 15 acres of class II lands, 30 acres of class III lands and 45 acres of class IV lands. If the number of constituent members of the family exceeds 5, the Laws permits an additional area to be included in the ceiling at the rate of two standard acres for each additional member in excess of 5, subject to a maximum of 18 standard acres.

**Seventy percent of the surplus lands which vest in Government as a result of the enforcement of the ceiling provision are required to be settled with persons belonging to the scheduled Tribes or the scheduled Castes in proportion to their respective populations in the villages in which the lands are situated and the remaining lands with other persons. If, however, sufficient numbers of persons belonging to the Scheduled Castes or Tribes are not available in the villages, or being available, they are not willing to accepting the settlement of land, so much of the land reserved for them may be settled with other persons.** For the purpose of settlement, the order of priority is prescribed as follows:

- (a) Co-operative farming societies formed by landless agricultural labourers
- (b) Landless agricultural labourers of the village in which the land is situated or of any neighbouring village.
- (c) Ex-service men or members of the Armed Forces of the Union if they belong to the village in which the land is situated.
- (d) Raiyats who personally cultivate not more than one standard acre of contiguous land.
- (e) In the absence of persons belonging to any of the foregoing categories, any other person. Subletting is entirely prohibited except in cases of disabled persons including those serving in armed forces, minors, widow etc. Under section 6(3) of the Act, privileged raiyats may also sublet their lands. The above class of persons except serving in armed forces will be required to

produce certificates from the village Panchayats for subletting their lands, where such Grama Panchayats have not been constituted the Revenue Officer has been authorised to such certificates.

For the implementation of the Land Reforms Acts, Chapter V of the Act provided for the administrative machinery according to which the land Commissioner has been set up. The first Land Commissioner was set up on the 13th September, 1966. The tenure of the commission expired after three years i.e. on the 12th September, 1969. The second Land Commission was constituted and continued up to the 10th February, 1973 when the Third Land Commission was formed with seven members of who three are officials and four non-officials. The official members are the Members, Board of Revenue, Odisha, Chairman; the Land Reforms Commissioner, Odisha, Member-Secretary; and the Commissioner-cum-Secretary to Government, Revenue and Excise Department, Odisha, member.

The functions of the Land Commission were to review the progress of land Reforms in the State from time to time, publish report at least once a year and advice Government in all matters relating to land reforms. Under section 55 of the Odisha Land Reforms Act, 1960, the District Executive Committee was formed with the Collector as Chairman and two nominated non-official members. The committee which normally held office for three years, reviewed the progress of land reforms. The statute, however, did not make any provision for the constitution of any committee at Tahasil level. In view of the growing importance of the land reforms measures and their likely impact in the field, the Government in its Resolution No 60267-R, dated the 15th September 1973, authorised the Board of Revenue, Odisha, to frame Tahasil Advisory Committee in each Tahasil consisting of four members with Sub-Divisional Officer as Chairman, the Tahasildar as Member-Secretary and two non-official members. Accordingly committees were framed in all the Tahasil of the District. These committees held office normally for a period of three years and meet thrice in a year. The committee advised in the matter of distribution of ceiling surplus lands and the implementation of land reforms measures in the field. In addition, these committees also advised in the matter of distribution of Government waste lands and settlement of un-objectionable encroachments with the landless persons in accordance with the laws and rules in force in the State.

In the context of the Act the fundamental question that arise asks what would be a tribal person having some land in possession (*de-facto*) but the same land has not been settled in his favour (*de-jure*) through settlement processes be called? Would he be called a landless person? The customary system considers him a respectable tenant having owned land allocated to him by the village council in the customary distribution process. However, the government records may consider him landless. It is therefore very essential to settle the customarily held land in favour of the person or family who has it under possession with due respect to the customary law applied to individual holding, especially where the government land settlement process has failed for whatever reasons.

### **Abolition of Land Revenue**

Along with the change in the concept of land and tenancy, the concept of land revenue too underwent modifications. When the system of payment of land revenue in cash was introduced, it was hailed by its authors as an improvement over the traditional system of payment in kind. In the year 1946, the Government of Odisha appointed the Land Revenue and Land Tenure Committee which recommended, among other things, Legislative and other measures for reforming the different systems of land revenue

or rent, as the case may be, as far as possible uniform, equitable and elastic. The Sub-Committee appointed by the National Planning Committee under the Chairmanship of Late Jawaharlal Nehru recommended in 1948 as follows:

“During the transition period no tax, rent or land revenue demand should be made in respect of any piece of land, which is so small or the gross outturn of which is so slight that the whole of it, if left to the cultivator of his own use, would not suffice to give him a decent human existence according to a predetermined standard”.

The Government, however, decided to abolish the land revenue with effect from the 1st April, 1967. The historic decision of the Government to abolish land revenue which had been on the soil of the country from the time immemorial, **symbolises a further step in alienation of the right on land in favour of the tenants**. As a preliminary step in this direction executive instructions were issued to all concerned not to collect from the 1st April, 1967, pending finalisation of the scheme.

After careful consideration of the pros and cons of the land revenue abolition scheme, the government introduced a bill known as the Land Revenue (Abolition) Bill, 1970 in the State Legislature on the 3rd April, 1970 to abolish the land revenue and the same was enacted on the 26th October, 1970. The law of land revenue abolition provides that no raiyot or tenant shall be liable to pay land revenue in respect of any land held by him directly under the Government provided such land is used for the purpose of agriculture, horticulture or for the purpose of any small scale industry outside the limits of a municipality or Notified Area. If any sum was paid on behalf of any raiyot or a tenant towards the land revenue after the 1st April, 1967, such amount if it cannot be adjusted against arrears, shall be refunded to him on application made on that behalf.

The concept of land reforms is to give the rights of occupancy to the actual rayats so that the rayats can make involvement or develop the land. The concept of land reforms has been changed from time to time and now it has got many diverse and comprehensive meanings.

The main important points of the land Reforms Act may be summarised as below:

1. Recognition of certain kinds of tenants as rayats
2. Giving permanent, heritable and transferable rights on the land to the rayats
3. Abolition or non-recognition of tenants or sub-tenants under a rayat except in the cases of persons under disability or privileged rayats
4. Conferment of the ownership right on the land occupied for dwelling houses by the tenants or rayats
5. Regulation of conversion of agricultural land into non-agricultural use
6. Regulation of the relation between landlord and his rayats or tenants
7. Regulation of transfer of land belonging Scheduled Tribe or Scheduled Caste to other persons not belonging to the ST or SC
8. Settlement to the tenants of the tenanted land
9. Fixation of ceiling on the agricultural land holding to ten standard acres for a family of five members and vesting of the surplus land to the Government on payment of compensation as fixed in the Act and distribution of the surplus land to the landless agricultural labourers or rayats having less than one standard acre of land.

Apart from this, some important Act and Rules relevant in the context of study are summarised as below;

### **Odisha Estates Abolition Act, 1952**

This Act came into force with effect from 9<sup>th</sup> February, 1952 and provided for abolition of all rights, title and interest in land of all intermediaries by whatever name known between the rayat and the State of Odisha and authorized the State Government to issue notification from time to time declaring that any estate has passed to and become vested in the State from all encumbrances. Some such intermediaries land is still continuing in the Tahasil records. The Act, to a larger extent stood barrier to tribal land alienation.

### **Odisha Survey and Settlement Act, 1958**

This Act is the Bible for maintenance of land records. Under this Act one village can be surveyed and prepared village map and records. The survey and Settlement Act and Rule provide Tahasildar to make up-to-date and change in entries of the RoR as and when required, without necessitating replacement of RoR or Map. Under this Act, Government notifies that a particular area will be taken up for preparation of survey, maps and records. The survey and preparation of maps and records were being experienced by old cadastral instrument by involving man powers. **Now Government has changed the Survey method by using scientific instrument involving an expert from on Aerial Survey with digital method for preparation of village maps and records. Government has also expressed its intention and brought an Act as Special Survey and Settlement Act-2012 to carry out Modern Technology Survey in any part or the whole of the State.**

### **Odisha Government Land Settlement Act, 1962**

The intention of the Government is to distribute Government land to homestead less/ landless families under this Act besides the alienation of Government land for various development purpose and institutions also. Collector occupies a vital position in the district to sanction a particular amount of land under this Act. The role of Tahasildar, Sub-Collector, Collector, RDC, Member of Board of Revenue and R and DM Department are defined in this Act to sanction Government land for development purpose with or without permission.

### **Odisha Prevention of Land Encroachment Act, 1972**

Tahasildar is in his jurisdiction the custodian of Government land under this Act. The OPLE Act is not only a law for eviction of encroachments but is also a law for settlement of land. Collector is the appellate authority against the order of Sub-Collector under this Act.

### **Land Acquisition Act, 1894 and its repeal**

The Land Acquisition Act, which was enacted in 1894 during the British regime in India, was in vogue in the country for as many as 119 years. It was repealed by the Government of India w.e.f. 1<sup>st</sup> January, 2014 and was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation (RFCTLARR) Act, 2013.

### **Odisha Public Demand Recovery Act, 1962**

According to OPDR Act, Public Demand (PD) means any arrear or money including any interest which is lawfully chargeable there upon till the signing of the certificate. Public Demand ordinarily relates to

dues payable to Government or Public Authority, which have become arrear as the defaulter having not paid it by the payable date. Statutorily, Collectors and Sub-Collectors are certificate officers under OPDR Act. The Collector may appoint any other officer with sanction of RDC to function as certificate officer. The certificate officer or receipt of certificate requisition from certificate holder can start certificate case against certificate debtor for recovery of the Public Demand under OPDR Act.

### **Communal land, Government land and usage of Customary law**

The common folk know two types of land in terms of legal ownership. They are private land and government land. In general understanding the private lands are those on which one has clear Record of Rights (RoR) or such other legal testimonial to prove that the land is privately held. In contrast, the lands on which does not fall under private category is regarded as the government land. In another way of interpretation it may be said that the lands that have been settled in favour of tenants is private land and the unsettled land may be regarded as the government land. The communal land on which community exercises its ownership customarily and where the community level customary laws apply has different legal connotations in this context. For a clear understanding on the different kinds of land in terms of ownership – private, communal and government land the following revenue laws provide clarifications. In general the tribal communities, in this context the Dongaria Kandha and Paudi Bhuyan, exercise ownership and control over government land considering it communal land but against which the community may not be having legal ownership. It is in this context the customary law may help retaining the communal ownership over the lands through legal provisions contained in the revenue laws of the State. In this connection the following laws may be reviewed in the context of validity of customary law.

### **Communal land**

The **OGLS, Rules 1983 and OCFPL, 1948** have defined meaning and scope of **communal land**. The communal land as explained under provision of these Acts and Rules creates scope for legal status of many communal lands held by the tribal communities but such lands have not been brought under the settlement processes. The evidence based usage of customary may be of great help in getting those lands settled in future.

As per **Orissa Government Land Settlement Rules, 1983** Sec. 2 - Definition

(1) in these Rules, unless the context otherwise requires-

(b) **Communal with respect to a land means a land which is used by any village community or any section thereof for a communal purpose** like burying or cremating dead bodies, celebrating public festivals, holding melas or common worship and the like without any Interference from anybody or paying any fees for the purpose;

(c) Effective area of a village means the total extent of private agricultural land plus arable Government lands consisting of Gochar, village forests and waste land in the village, multiplied by 20/23.

**Note** - For the purpose of calculating arable Government land under this clause, the following categories of lands shall be excluded, namely :

(i) lands known as 'char' and 'diara' ;

- (ii) lands subject to the custom of Utabandi\* Settlement;
- (iii) Canal side, road side and other lands considered temporarily surplus by the Works Department and Irrigation and Power Department which are placed at the disposal of the Revenue Department for temporary Settlement;
- (iv) surplus railway lands placed by the Ministry of Railways at the disposal of the Revenue Department for being utilised for the purpose of Agriculture; and
- (v) lands recorded or used for communal purposes;

\* Status of a tenant who holds land on the utabandi system without having acquired occupancy right

As per **Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948**

Sec. 2 In this Act unless there is anything repugnant in the subject or the context –

(a) Communal land means;

(i) in relation to **estates governed by the Madras Estates Land Act, 1 of 1908**, land of the description mentioned in Sub-clause (a) or Sub-Clause (b) of Clause (16) of section 3 of that Act : and

(ii) in relation to **cases governed by the Orissa Tenancy Act, 11 of 1913, lands recorded as gochar, rakshit, or sarbasadharan in the record-of-rights or waste lands** which are either expressly or impliedly set apart for the common use of the villagers, whether recorded, as such, in the record-of-rights or not:

(b) Estate and Private land shall have the same meanings respectively assigned to those expressions either in the Madras Estates Land Act, 1 of 1908 or in the Orissa Tenancy Act, 11 of 1913.

(c) Forest land includes any waste land containing shrubs and trees and any other class of land declared to be forest land by a notification of the [State] Government.

#### **Notes:-**

1. “Communal Land - Land not recorded as Gochar, Rakshit or Sarbasadharan in RoRs - No evidence that the land was either expressly or impliedly set apart for the common use of villagers - Land is held not a communal land to attract prohibition under Sec. 3” : 1992 (II) OLR 529.
2. “Communal Land - Defendant not a village - No right to claim the communal character” 28 (1962 CLT 24)
3. “Rakshit, Gochar land are communal land.” 36 (1970) CLT 159
4. “Communal character of land does not change even after it is vested in the State. The reason is that it is not the nature of any encumbrance, but only represents the character of the land.” 40 (1974) CLT 38
5. “Land not mentioned as communal land in the RoRs – Cannot be treated as communal land in absence of evidence to this effect.” ILR 1965 Cutt. 22: 31 (1965) CLT 654.
6. “Forest Land – Meaning of – The intention of the Legislature was not to convert all Bagyats lying within the State of Orissa to forest lands and thereby make Orissa Act of 1948 applicable to all Bagayats wherever situate.” 36 (1970) CLT 536

## **Government Land**

To understand what is government land or property, the revenue laws like OPLE Act, 1972, LAA, 1894, OGLS, 1962 provide some explanations and clarifications.

As per Orissa Prevention of Land Encroachment Act, 1972 (Sec 2)

Property of Government - Subject to the provision of any law for the time being in force, the following classes of lands are hereby declared to be the property of Government for the purposes of this Act, namely:

- a) all public roads, streets, lanes and paths, the bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nalas, lakes and tanks and all canals and water courses and all standing and flowing water and all lands including temple sites, house sites or backyards wherever situated, (Except) save in so far as the same are the property-
  - (i) of any Ruler of an Indian State merged with the State of Orissa, Zamindar, Proprietor, Sub-Proprietor, Landlord, Jagirdar, Inamdar, Khoropshdar or any other tenure or any person claiming through or holding under any of them; or
  - (ii) of any person paying shist, kattubadi, jodi, porupu or quit rent to any of the aforesaid persons; or
  - (iii) of any person holding under raiyatwari tenure or in any way subject to the payment of cess or any other dues direct to Government; or
  - (iv) of any other registered holder of land having proprietary right; or
  - (v) of any other person holding land under grant from Government otherwise than by way of licence;
- (b) land belonging to or vesting in any local authority which is used or intended to be used for any public purpose such as a road, canal, embankment, tank or ghat or for the repair or maintenance of such road, canal, embankment, tank or ghat;
- (c) land acquired under the provisions of the Land Acquisition Act, 1894 (1 of 1894) or under similar Acts for the purposes of any local authority, company owned or controlled by the State Government, Statutory Body or Corporation while such land remains as the property of the local authority, company owned or controlled by the State Government, Statutory Body or Corporation;
- (d) Immovable property claimed by the Rulers of the merged territories but conceded in their favour; and
- (e) lands belonging to an establishment or undertaking owned, controlled or managed by-
  - (i) any State Government or a Department of such Government;
  - (ii) any company in which not less than fifty-one per cent of the share capital is held by one or more State Government; or
  - (iii) a corporation established by law which is owned, controlled or managed by any State Government.



As per **Orissa Government Land Settlement Act, 1962**

2. Definitions -In this Act, unless the context otherwise requires:

(b) Government land means **any waste land belonging to Government, whether cultivable or not, recorded as House-site, Anabadi, Chot Jungle, Puratan Patit, Nutan Patit, Parityakta Bedakhali, Gochar or by any other description, whatsoever;**

Explanation - The expression 'any other description whatsoever' shall include

(i) Khasmahal lands, that is to say Mahals held under Khas which are treated as Government estates and the rent of which are payable under Section 3 of the Bengal Land Revenue Settlement Regulation, 1822 or **under section 4 of the Bengal Land- Revenue Settlement Regulation, 1825;**

(ii) Nazul lands situated in the State;

(iii) Gramakantha Parambok lands in the ex-Madras areas; and

(iv) Abadi lands situated in the State;

#### **Reservation of land for public purposes**

As per **O.C.H. & P.F.L. Act 1972** Sec. 8- Preparation of Statement of Principles, Sub-section (2) the Statement of Principles shall also contain the following details, namely; (a) specific areas, as far as they can be determined, to be earmarked for such public purposes and to such extent as may be prescribed.

Sub-section (4) Nothing contained in the O.G.L.S. Act 1962 (Orissa Act 33 of 1962) shall apply to lands required to be ear-marked for public purposes as aforesaid.

As per **O.C.H. & P.F.L. Rules 1973** Sec. 17 reservation of land for public purposes under clause (a) of Sub-section (2) of

Section- 8(1) Land may be reserved for all or any of the following public purposes, namely;

- a) Roads,
- b) Drainage and Irrigation Channels;
- c) Schools, Hospitals, Panchayat Office, Stockman Centres, Jubak Sangha, Mahila Samiti etc;
- d) Lands for military personnel;
- e) Extension of house sites;
- f) House site of landless persons;
- g) Cultivable land for landless persons subject to the approval of the Consolidation Committee;
- h) Gochar and Village Forest;
- i) Future development purposes;
- j) Playground;
- k) Cremation ground and graveyards;

- l) Any other purpose of similar nature for which reservation of land may be considered necessary in the interest of the land-owner of the unit

### **Status of communal land in Koraput (undivided) region**

The Madras Estates Land Act 1908 was in force till the abolition of the estates on 29<sup>th</sup> December 1952. After the abolition of when the survey and settlement work was in progress, the RoRs were prepared as per executive orders as there were no other law under which the operation could be carried on. The Orissa Survey and Settlement Act 1958 was enacted to do away with a bewildering variety of settlement laws and procedures prevailing in parts of the State and to prescribe an uniform law and procedure for the entire State.

The following kinds of Khatas have been prepared during the Settlement.

1. Royati (vide definition in Sec. 3 (16) of M.E.L. Act, 1908)
2. Private (vide definition in Sec. 3 (10) of M.E.L. Act, 1908)
3. Parityakta Bedakhali Royati (for surrendered/ abandoned and for the lands in khas possession of the land-holder which are not private lands)
4. Jamdharya-Jogya (for assessable lands)
5. Abad-Jogya Anabadi (for cultivable waste)
6. Abad-Ajogya Anabadi (for uncultivable waste)
7. Poromboke (for communal lands and reserved lands in all areas excepting Malkangiri)
8. Naukari Mafi (for lands held on service tenure)
9. Departmental
10. Sarbasadharan (communal lands in Malkangiri subdivision only)
11. Rakshita (reserved for the benefit of Government and people in Malkangiri only)
12. Sikimi (rights of Bhagchasis in Malkangiri subdivision only) Sikimi – under-raiyat
13. Gharabari (in town areas only)

At present the various kisams of land are mostly being recorded in the RoRs in following Khatas:-

1. Abad-Jogya Anabadi (for cultivable waste)
2. Abad-Ajogya Anabadi (for uncultivable waste)- fellow land, water bodies, stony patch etc
3. Poromboke (presently renamed as Basti-Jogya )
4. Forest Land includes Gramya Jangal-Jogya
5. Gochar Land- Godanda, Godharsa etc
6. Rakshit- for Army personals, development projects, minor minerals, Parbat kisam etc.
7. Sarbasadharan- road, Shmasan, temple, melan padia, palnauda/ Handi padia
8. Private – (commonly known as royati land for which rent are paid to the Govt)
9. Gharabari (in town areas only)

## **Management of some communal resources vested on the Gram Panchayat**

### **As per Orissa Gram Panchayat Act 1964 Sec. 44 Obligatory Functions**

(1) Subject to the provision of this Act and the rules made there under, it shall be the duty of a Gram Panchayat, within the limits of its funds to undertake, control and administer and be responsible for the following matters in respect of the Gram, namely,

- (a) Construction, repair maintenance, alteration and improvements of public streets,
- (c) The removal of unauthorized obstructions, projections and encroachments in or upon public streets and other public places;
- (l) Establishment, management and maintenance of common grazing grounds and lands for common benefit of the people of the Gram;
- (w) Minor forest produces;

(2) Notwithstanding anything contained in any other law, in the Scheduled Areas, subject to the control and supervision of the Gram Sasan, the Gram Panchayat shall exercise within its local limits, such power and perform such functions such manner and to such extent as may be prescribed in respect of the following matters, namely;

- (b) The ownership of minor forest produces.

Sec. 45 Discretionary Functions- the Gram Panchayat may, xxxx undertake within the Gram the control and administration of and be responsible for the following matters, namely,

- (b) Maintenance of village forests, declared as such by notification by the State Government for the purpose of this Act;
- (e) Assisting and advising agriculturists in reclaiming waste lands and cultivating fellow lands;
- (f) xxxx, arranging for co-operative management of land and other resources of the village, xxxx
- (w) Maintenance of village agricultural bunds situated on lands belonging to or vested in the State Government and construction of such bunds on any such land;

### **Sec. 71 Vesting of Public properties in Gram Sasan**

(4) Without prejudice to the generality of sub-section (3) but subject to the provision thereof, properties of the nature herein specified shall vest in the Gram Sasan and be under its management, direction and control, that is to say-

- (a) Village roads, (b) Irrigation sources, (c) Ferries, (d) Waste lands and communal lands,
- (e) Protected Forests within the meaning of the Indian Forest Act, 1927 (16 of 1927) and Unreserved Forests within the meaning of the Madras Forest Act, 1882(Madras Act 5 of 1882) in respect of the management, protection and maintenance thereof for timber, fuel, fodder and other purposes,
- (f) Markets and fairs or such portions thereof as are held upon public land or upon land belonging to or under the control of Government together with such lands.

Provisions under the Central Act PESA provides legal spaces for customary rules and laws in scheduled areas which is very relevant in transacting the tribal customary law with the revenue law of the state

government in relation to communal land tenure systems, vesting in management of communal land and land for public purposes in the hands of tribal self governance units. In many cases some tribal communities, particularly the PTG may have no representation in a Panchayat in normal course. It may be attributed to their small number or low economic status or nomadic character. The Central Act (PESA) has envisaged that the State Government may nominate persons belonging to such ST as may have no representation in the Panchayat at the intermediate level or district level. However, such nominations shall not exceed one tenth of the members to be elected in the Panchayat.

Orissa Act adds that customary mode of dispute resolution should be consistent with the 'relevant laws in force and in harmony with the tenets of the constitution and human rights'. In response to the letter in Central Act that all Amendment Acts of the states made Gram Sabha competent to safeguard and preserve the traditions and customs of people; their cultural identity, common resources and customary mode of conflict/dispute resolution.

### **Bhuria Committee observation on LAA in tribal areas**

Bhuria Committee noted that the Land Acquisition Act which enables the State to take over any law for a 'public purpose' is based on the principle of individual land ownership and does not take cognizance of the customary regulation of common property resources in tribal areas. Among many tribal communities, land and such other natural resources are owned jointly by community and its use by individuals is sanctioned by the community. Such Land Acquisition Act does not recognize this basic principle in tribal areas; it is not permitted on realistic grounds. The Committee opined that the basic lacunae in the Act have to be removed by making the consent of the local community in this matter obligatory. In other words, land in the Scheduled Areas should be acquired with the consent of Gram Sabha and the proposed alternate livelihood for the affected families should be acceptable to them. Indirectly, the committee has recommended for consultations with committees and considers the customary law in vogue in relation to the lands.

### **Forest Rights Act 2006**

The 1980 forest Conservation Act emphasized upon involving the forest dwelling communities in conservation and management of forests. In a way it opened the gateway for dialogues, discourses and discussions on recognizing the communities' rights over the forest land. If forest dwellers are denied with their legitimate rights over forest resources then that would create situations for non participation of forest dwelling communities in conservation efforts and that would pave way for further degradation of the forests.

To mask over the historic injustice done to the tribals and forest dwellers by way of ignoring their rights over land especially on forest lands through the several Forest Acts, policies and settlement processes the Forest Rights Act has been followed with aspirations and expectations. The Forest Rights Act is an important tool towards recognition of these rights as it gives the community ownership over their forest resources and access to traditional practices.

The FRA, 2006 upholds as a duty and encourages member control, equality and positive restrictions. Its provisions give legal entitlement to community forest resources (CFR) and support the role of communities in management, protection and sustainable use of natural forests. The Act has built hope

for forest dependent communities to have legal rights over their own forest resources and thereby renew their efforts towards its sustainable protection and management.

### **Community Forest Rights provisions under Forest Rights Act, 2006**

The most important clauses for community rights are clauses 3 (i) together with 3 (5) and 2 (a). These clauses give the communities clear power and rights over their inhabited forest land. The community can take control over the management of Reserved and Protected forests and all other Government forests like Sanctuaries and National Parks. With these clauses the Gram Sabha in particular, can take protection actions over the forest towards whatever they think would destroy forest, wildlife and biodiversity. They are empowered to protect the forest from external forces like Forest Department activities or any other agency. The Gram Sabha can draw rules for restricted entry to forest and can plant trees if required or draw any other rules regarding use and management of their forest.

The following is an overview on such aspects of the FRA, which are relevant in the context of the rights of the tribal forest dwellers on the forest lands.

3 (i) right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use;

Under Section 3 (i) the Forest Rights Act gives the community the right to protect, regenerate, or conserve or manage any community forest resource. This right empowers the community to care for their land which they have traditionally inhabiting with their own rules and regulations regarding forest protection and management.

3 (k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

Rights are also given for practicing their traditional knowledge about natural resources under section 3 (k). They have access to sacred groves, holy trees, medicinal plants and other culturally important resources and knowledge.

3 (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

3 (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

Other important rights under section 3 are the right of ownership and access to collect, use and sell Non-Timber Forest Produces on which the community is dependent on for their livelihood needs and which give them another source of income. Under the definitions of the Act "minor forest produce" includes all products other than wood or timber, which is of plant origin including bamboo, brush wood, honey, wax, tendu or kendu leaves, medicinal plants and others. It also includes crucial fuel wood. The law gives people ownership over these NTFP. People can go inside forests to collect, use and sell these products. Additional to that, the Rules defines NTFP including local level processing, value addition and transportation in forest area through head loads, bicycle and handcarts for use or sale by the gatherer or the community. The law is an individual right unless the rules or Gram Sabha say so but is crucial for the livelihood of the community. The Act also gives rights to other community rights such as fish or water

bodies or grazing. For fishing and grazing areas no individual can claim ownership, the rights go to the Gram Sabha which then have to frame the rules.

5. The holders of any forest right, Gram Sabha and village level institutions in areas here are holders of any forest right under this Act are empowered to

a) protect the wild life, forest and biodiversity;

b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;

c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;

d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with;

Under section 3 (5) the duties of any holder of rights are settled. The community as a forest right holder, the Gram Sabha in particular, is empowered to protect wildlife, forest and biodiversity as well as water sources and other ecological sensitive areas. Furthermore any form of destructive practices shall be prevented to preserve the community habitat. Restrictions to the community forest resources shall be regulated to not jeopardize wildlife, forest and biodiversity.

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

In chapter 4 the FRA gives authority rights to the Gram Sabha. The traditional institution of the village, a general governing body, has now the right to act autonomously in a legal manner. Every household can participate in decision-making processes regarding the village. It also initiates the procedure for claiming the rights. The Act has potential to ensure that the rights of the community are upheld.

The Forest Rights Act has been followed up with expectations and aspirations. But there have been critical gaps in implementation of the Act, especially in obliging to customary rights of tribal communities. In matter of fact, the ignorance of tribal communities about the provisions in the Act on one hand, and the unavailability of documented literature on the customary rights of the communities have minimized the implications and scope for application of the Act. The developments so far indicate that the FRA has remained limited to consideration of individual claims, which again has not been dealt with meticulously. The Community Forest Rights (CFR) under FRA has been very little addressed. Further, the provision of the Act in settling Habitat Rights of the PVTGs has not yielded any desired results so far.

To comprehend, it can be said that there are legal provisions in the State level Acts and Central Acts to accommodate the customary rights of tribal communities in respect of their individual holdings and community holdings of communal lands even though settlement operations have not been conducted on

great extent of such lands. The customary law of respective communities operating on such land matters thus may have legal recognition in due course of time.

## Chapter – 7

### Conclusion

The traditional systems of justice are largely un-codified, comprise of overlapping jurisdictions enjoying autonomy in administration of justice. Due to the diversity among the tribal groups, each tribe in India has its unique socio-cultural milieu, justice systems and dispute resolution practices based on customary law. The tribal customary law is culture specific and their usage in respective societies has been changing with modifications and amendments. All customary laws have their social and super-natural sanction. Among many tribes social organization and built-in authority structure, like lineage, maintain the structural form of social control mechanisms. Social change appears to have caused erosion of customary laws in certain situations. Central to the body of customary law is the institution of tribal chief or tribal council which upholds the sanctity of law and enforces it. However, both the customary law and the common law shall remain valid to the extent to which such customary or common law does not conflict with the Constitution or any other statutory law.

The tribal people follow certain norms, rules, customs, values and mores in almost every aspect of their socio-cultural life. These codes of conduct have been shaped up over generations as systems within the societies. The systems govern their mode of life. Customary law is deeply ingrained in these systems. In the changing scenario some of the customary laws have become obsolete, some are rarely used, yet there is a core of customary laws that still govern the tribal societies. Responding to change and development in social life some customary laws have been modified or amended or reformulated but the root is always there. Certain aspects of the customary law that is by and large ratified within the communities are commonly known. Law is there with the communities since the day their socio-political systems have been put in place. The customary laws may not be unique always for each tribe. It is not uncommon that there are similarities and affinities clearly identified when the customary systems of different tribes are analysed in cross cultural context. Hence, it is presumable that certain law systems are kind of universal to tribal communities while some are unique, parochial and confined to particular communities.

In a tribal context, certain tribal communities are known for certain customary behavior that may be unique. Typical customary behavior may also be linked to their identities. The loss of such typical customary law may also contribute to the identity crisis of the communities. Thus customary law stands as culture markers, identity symbols and tribal worldviews. Scholarly observations on customary law and its usage in different spheres of tribal social life indicates that the socio-cultural behavior of the communities have been guided by some sort of customary rule. The rites and rituals, fairs and festivals, relationships and interactions – everything is coordinated by some sort of customary rule and code of behavior. However, great gamut of the customary law and its usage is found to be ruling the access and control to assets and properties, especially the land being the most important asset.

Observations on the Dongaria Kandha and Paudi Bhuyan tribes, both regarded as Particularly Vulnerable Tribal Groups (PVTG) indicate that customary laws have overtone on the acquiring, possession, ownership, inheritance, transfer and transaction of land within their communities. Such customary law applies to land governance in the community comprising issues of land matters at the individual/family level, at the community level, inter-community level, village level and inter-village



level. While most of the customary law regarding land matters has been diffused within the revenue laws of the state, there are still some prominent customary laws in vogue which have not been well documented or referred to. The study of customary law on Dongaria Kandha and Paudi Bhuyan provided considerable cases to understand their customary law related to land governance.

### **Findings of the study**

#### **Customary law before emergence of formal law**

Both the Dongaria Kandha and Paudi Bhuyan community governance system have developed their customary codes, restrictions and sanctions on land related matters since time immemorial. The question that whether they have developed any customary rule at their level is answered in very simple terms that they have been following what their predecessors have formulated. In a manner the tribal leadership of both the communities represent themselves as the legacy holders of their predecessors who had set the systems, rules, codes, values, ethics and have been maintaining such social systems through generations. The leaders of both tribal communities are of opinion that their predecessors have set these rule systems that are followed today even before the British rule in the region. The rules and systems set then mainly governed the marriage, social life, possession of landed assets, relationship within the community and outside the community, rules relating to boundaries, rights over forests and such. The territories where they have been living came under the royal rule before the British came or the merger of feudatory states had happened. Hence their rule systems and administration of justice were in some way influenced by the royal system. In other words they had to follow the rules and governance mechanisms set by the kings and accordingly they had set behavior within their communities and such behavior later became ideals that gradually turned into rule systems and laws within their respective communities.

During the royal reigns the communities had developed their rules concerning setting of habitat, delineating habitat boundary, modes and means of land acquisition and land alienation. The rule systems that the communities had developed was in line with the grants and privileges provisioned in their favour by the royal administration. There was always the influence of the royal systems on observance of the community level customary rules. In the current survey which is by and large based on case studies so as to build evidences in favour of continuation of the customary law within the tribal communities could not gather any reliable case study to indicate the extent to which the customary rule system of the communities was influenced by other systems as such things are beyond the memory of the current generation. As such, secondary sources of information in this context are very scanty. Further reference from historical research may help in establishing the facts.

#### **Customary law related to setting of habitat and delineation of boundary**

The Dongaria Kandha are of opinion that their rights over a habitat was decided by the king of Jeypore. The community members were free to set their habitat wherever they liked but the condition was that the habitat should be uncontroversial in terms of tenurial rights. In other words the place where the community intended to set up their habitation should be free from occupation by any other community. That again was not the sole consideration. The community members had to ensure that the space was fit for setting a settlement on religious grounds. The land area acquired by the community around the settlement for their bonafide use was determined by the village community which was getting post facto approval by the kings or their deputed subordinates. The Dongaria Kandhas set

their settlements clan wise. If however, there were any conflicts between the clans the matter was being proceeded to the royal court where the dispute was being resolved. In certain cases, a solid ball of earth called Virgamuda was issued by the king to certain Kuda as a token of proof of their right over the land under their possession. In a village the Virgamunda remain in the house of the village head which is hereditarily transferred to next generation. Some people are also of opinion that Virgamunda is only issued in case there appeared any conflict over land ownership. The villages are grouped mutha wise, each mutha consist of one clan only. Ethno-historical accounts on villages best describe the customary law relating ownership over villages by particular clans by originally settling there or taking over a site by other reasons.

In the Paudi Bhuyan territory the system of setting settlements was no different from that of the Dongaria Kandha. The Bhuiyans were making their settlements and acquiring their communal land rather freely without any intimation to the royal administration. However, after a settlement was made they were being administered by Sardars appointed by the King. The Bhuyans had the system of Pirh or Bar – the jury and the judicial system was linked to that. A pirh was constituted of a number of villages and each Pirh was led by a Sardar. Each Sardar was asked by the King to state in how many villages the Sardar had control. Accordingly the Royal court distributed the Paudi Bhuyan settlements among a number of Sardars. Each Sardar was supposed to allot land to the Paudi Bhuyans within his jurisdiction and collect cess, tax and contributions from each household in each village under his jurisdiction. The taxes thus collected were being deposited in King's camp court especially on the eve of Dasahara. The villages are grouped Pirh wisewith Pirh as the apex body in their judicial system.

In case of both the tribes it may be said that the rules concerning setting a settlement was directly or indirectly being governed by the royal administration. Abiding by the royal governance system, in later times became the customary law of the concerned tribes.

The customary boundary of settlement and the traditional use zone is having clear landmarks as references. The land area acquired by a village community remained under community possession. The communities acquired lands as per their need without encroaching land possessed by any other community. Hence there was little dispute over land.

### **Settlement operations and its implication on customary law**

During the British times Mustajari system of land revenue administration was in operation. It was prevailing both in the Dongaria Kandha and Paudi Bhuyan territory. The mustajair is an agent for the collection of rent, remunerated either by a grant of a piece of free land or percentage of the collections. The office was hereditary and normally held by an influential person in the village. The mustajaris are not required to keep any account of records of the holdings in village. The mustajari system indirectly provided relatively free access to the tribals to acquire and possess land under community ownership. Thus no tribal customary law could maintain its supremacy except the fact that the community owned the lands. Only under conditions of non-payment of tax or cess the land revenue administration of British regime was taking its course. Thus, as long as there was no violation of the land revenue administration the customary law of tribal communities were maintaining their supremacy within the village level only. The communities, to ensure their entitlement over land, forest, trees and minerals were bound to pay taxes and cess.

The land settlement processes undertaken during the British rule and in the independent India both directly and indirectly took recourse to the tribal customary law in order to settle the individual and community land in the tribal villages. The customary law that was referred by the settlement operation team were the laws governing the boundary of village and common access areas as well as the lands that were under individual or family possession. During 1951 to 1964 major settlement processes were conducted by Government of Odisha everywhere including in the territories of the tribes under the study. The technical method followed is argued to be erroneous though. The Government of Orissa adopted the plain table method of survey of Bihar and Orissa pattern against the chain survey method followed in Ganjam, the former being less costly. But the plain table survey method could not measure slopes greater than 9% slope. Thus, it could not properly measure their traditional individual holdings lying on hill slopes and so such lands could not be taken on government records as individual holdings.

Two strong views may be articulated in connection with the errors in the settlement process. One, due to the error in survey method two important revenue laws of the state such as Orissa Survey and Settlement Act, 1958 and Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 could not be utilized in full measure. Thus, many land parcels and fragments of individual lands and communally owned lands. The other view is that due to the errors the tribals legitimate ownership over their land could not be recorded in government records and this resulted the situation that the *de-facto* land owners were considered *de-jure* landless. The *de-jure* landless communities could not avail the benefits of land transactions.

The settlement process became a landmark of major modifications in customary law at the community level, both in the case of Dongaria Kandha and the Paudi Bhuyan. During the settlement operation the settlement officers consulted the tribal chiefs and situational leaders to identify land parcels in favour of the individuals and on the basis of such consultations and verification of physical possessions. In the process the lands that fell under the 9% slope zone could be settled and the remaining could not. It is to be noted here that before the settlement operations possession of land by individual households was decided by the village council and the customary law in that regard was dealt in respect. The lands that could be settled and recorded in the name of tenants directly meant that the community level customary law may have no application on such recorded lands against which Record of Rights have been registered. On those settled and registered lands the village council was having absolute ownership before settlement. The sanctions and punishments under the purview of customary law that was being maintained by the village council could no further apply on those settled and registered lands. For example, the village council used to have the authority of disowning a family from the allocated land against certain instances of violation of any social norms or restrictions. Once the same land got registered on the name of a given tenant, the village council lost its authority to disown the person from his holding despite any serious violation of socio-cultural norms. The village council now can at best sanction excommunication for any such violation. Thus the customary law that empowered the village council as owner of all the lands in its jurisdiction reduced to be applied to those lands that could not be registered on the name of tenants. Thus the settlement operation marked a watershed in limiting application of customary laws in the case of individual possessions and thereby reduced the authority of village council from exercising its traditional governance on lands that had got official records of rights.

The customary law prevailed and its usage remained limited to the lands that could not be registered during settlement process. In other words the usage of customary law continued on the individual lands located above 9% slope and the village common lands of non agricultural land nature. It may also be stated as that the customary law became meaningless for royati land. However, if the tenant committed any crime of grievous nature and proven detrimental to the community interest he may be punished by the village council but the community cannot take over its title on land.

### **Marriage rules are at the root of land related customary law**

The customary laws related to lands have its roots in the marriage rules in both the tribes. The marriage rules takes precedence over the property rights of the tribes both at household level and community level. In both the tribes the marriage is endogamous within the community and exogamous in the clans. The tribes try to adhere to the marriage related customs and traditions to the best possible extent so as to retain the property inheritance pattern along the male line of descent. The rules are rather strict although having some relaxations in certain situations.

In the Dongaria Kandha society marriage within the clans face severe sanctions from the village council. Marriage within the clans or within consanguineal kins is strictly denied. When any such situation happens a son is deprived from his ancestral properties. The family of the person doing so may face excommunication from the community and the person may have to be thrown out of the community. Hence to retain one's right to inheritance of properties he has to abide by the marriage rules strictly. Marriage within the community despite restrictions of marriage in between certain clans which is usually not acceptable to the community may get some relaxations in terms of punishment. In such cases only a penalty in cash or kind is sanctioned. The man committing the mistake may seek pardon from the village council and subject to approval the issue is resolved. However, if a man or woman marries to a scheduled caste member then severe punishment is granted. The man and woman are removed from the community, they are considered dead for the community, death rites are conducted for the man and woman despite the fact that they were not dead, the families of the persons in marriage are excommunicated from the community, the man and the woman are denied shelter in the Dongaria villages and above all, the man if belongs to the Dongaria clans is disowned from his father's properties. However, marriage between two persons belonging to different tribal communities gets approval after some processes at the level of village council, mutha and mandal level justice systems.

In the Paudi Bhuyan community the marriage rules are stricter compared to the Dongaria Kandha. They are rather Hinduized community and follow the customs and traditions laid down for marriage between two persons. With respect to pattern, the Paudi Bhuyans differentiate the marriage on the basis of Bhai (agnatic) relation and Bandhu (non-agnatic) relation. Marriage between Bhai (brother) relations is prohibited where as marriage with Bandhu (friend) relation is accepted. Similarly marriage in between same khili (extended lineage) is prohibited. marriage of individuals with same surnames like Swain and Swain, Pradhan and Pradhan, Dehuri and Dehuri is also prohibited. Restriction of marriage with other particular tribes or people is also to be respected. No form of cross-cousin marriage, sorroratic marriage or marriage in exchange practice was observed among the community in studied villages.

There is a clear distinction between the Pani chhuan and Pani achhuan communities which should always be referred to in case of marriage. While the Pani chhuan community means the caste and the

community within which marriage is permitted, the Pani achhuan community means the caste or communities within which marriage is strictly avoided. There are sects within larger Bhuyan community within which marriage is not allowed. Inter community marriage between Paudi Bhuyan and Juang for example is seriously dealt with punishments and sanctions. Inter-community marriage between Paudi Bhuyan and other tribes like Kolha, Ho and Munda drags severe punishment like penalty in cash or kind, excommunication to the family of the man in particular if he hails from Paudi Bhuyan community, disowning from parental properties, denial of shelter in any Paudi Bhuyan villages are some of the sanctions issued against the man. The case studies provide more illustrations in this regard.

Thus, traditional norms governing marriage is at the roots of the customary laws related to property inheritance, transactions and transfers.

### **Land alienation and customary law**

From the available case studies it becomes clear that there are not enough evidences of alienation of tribal land by non-tribals in the case of both the tribes studied. The land alienation issue may be considered in relation to emergence of land alienation acts during pre and post independence period, and the settlement processes undertaken in different periods. The two land mark laws preventing land alienation are the enactment of The Agency Tracts Interest and Land Transfer Act, implemented since 14<sup>th</sup> August 1917, was kind of designed to safeguard the interests of adivasis. This was passed with a view to preventing transfer of lands from adivasis to non-adivasis, which was taking place rapidly in the area. The other Act is The Orissa Scheduled Area Transfer of Immovable Property (by Scheduled Tribe) Regulation, 1956. The aim of the regulation is to control and check transfer of immovable properties in the scheduled Area of the State of Orissa by Scheduled Tribe. The regulation clearly states when transfer of immovable property by a member of the Scheduled Tribe is void.

- a) Any transfer of immovable property situated within a Scheduled Area by a member of Scheduled Tribe to person not belonging to a Scheduled Tribe without the previous consent in writing of the competent authority
- b) In execution of any decree for realization of the mortgage money, property mortgaged if sold in favour of any person not being a member of the Scheduled Tribe without the previous consent in writing of the competent authority.
- c) A transfer of immovable property in favour of a female member of a scheduled tribe who is married to a person who does not belong to a scheduled tribe.

The above two Acts regulated the land alienation issues to protect the tribals from illusion to sell their land. However, the Acts have not been much helpful to protect tribal lands, especially those lands against which there is no Record of Rights issued in favour of the member of tribal community. The customary law in this regard has been a major tool to prevent the illegal alienation of land. Logically, record of right were issued through stages of settlement processes. The land settlement method adopted could not measure the slope lands above 9%. Most of the tribal lands have been located on slopes above 9%. Thus, one cannot say that the settlement process could settle all tribal lands and accordingly record of rights were provided. Legal land alienation can happen if there is clear record of rights. In absence of that the land transactions cannot be called alienation. Hence, evidences of illegal alienation of lands in the areas of Dongaria Kandha and Paudi Bhuyan are hardly found. Thus,

the laws preventing land alienation have been applicable to very few patches of land in these tribal hinter lands against which there is clear record of rights.

It may be construed that the customary law of the tribes have been very instrumental in preventing land alienation from tribal to non-tribal. In both the communities, some case studies have been available on the basis of which the tribal leaders were consulted. The views of tribal leaders may be comprehended as that, with the setting of a settlement each tribal member gets to know the jurisdiction of the village, the land holdings within and the persons/families holding land. Any land transaction cannot happen beyond the knowledge of the village council. The parties in transaction may or may not bring the matter to the notice of village council or their administration systems while doing the transaction but it comes to notice of village council sooner or later. For example, let's say that a tribal sold his land against which there is no record of rights to a non-tribal. When the new owner takes possession of the land that is the time when the village council gets to know about it. The village council may not like to allow a non-tribal to share the land in jurisdiction of the tribal village. So they start challenging the alienation. It so happens, as leaders of both the tribes viewed, that the new owner is strongly opposed by the tribes men and they do not allow the new owner to take possession over the land. Few cases where such situations appeared have been mentioned in earlier chapters.

The village council does not interfere in the matter of a temporary informal leasing of tribal land to a non-tribal for any particular purpose like share cropping or contract farming or for harvest and sale of produces from orchards. In the areas of both the tribes such informal arrangements are there. However, there are instances that the leaser becomes casual after leasing out the land to a non-tribal. Year after year the non-tribal continues to cultivate the land and in the meanwhile the non-tribals try to get an encroachment case filed in his favour on the said land which becomes a prima facie during issue of record of rights. During the physical verification of land the tribal village council gets to know about it and challenges the authorities which result in restoring the land to the concerned tribal owner. Some secret transactions do happen where the non-tribal manages to get record of rights made in his favour without any physical verification. The non-tribal do not disclose his ownership for many years together. But when ultimately it comes to knowledge of the village council the matter is challenged, official records are modified and legal actions are taken. One such case that happened in Dongaria Kandha area has been mentioned in respective chapter. Similar situations in Paudi Bhuyan territory are there that have been mentioned in earlier chapters.

Thus the customary law assumes to be a valid instrument preventing land alienation. The active socio-political institutions of both the tribes have been able to prevent alienation of tribal land by non-tribals irrespective of the fact whether there is record of rights against the concerned land or not.

### **Land inheritance to women**

In the current situation, in case of both the tribes, the landed property is inherited to sons only or along the male line only. That is the customary law relating to inheritance. Inheritance of landed property to women has not got customary approval in both the tribal societies. However, there are arrangements within the code of customary law in both the tribes through which women have been enjoying ownership rights over parental land. However, such ownership is only limited to usufructory rights, for example, cultivating the same land for survival. Such conditional ownership is granted only with further conditions. As seen in Dongaria Kandha society, the customary law applies that daughter of a son less

father may enjoy the landed property of her father as long as she continues to live in her parental village with her husband and children. Her rights over father's land are granted as long as her children and their successors continue to live in the village. If she leaves the village then the land would go back to her consanguineal kins in the male line or would be reverted to the village council. This is how the Dongaria villages that were kind of single clan villages in the beginning became multi-clan villages when daughters of son less father lived in the villages with their husbands who would obviously be from different clans. Unmarried women, abandoned women, divorced women as singles may enjoy share of the parental landed property as share croppers till they marry again. If they do not marry and continue to live as singles then they will be required to mobilize lands from the communal property which would be restored to the village council after their death or leaving the village for some reason.

In the Paudi Bhuyan society similar situation is observed. However, the Paudi Bhuyans have codified their customary law in this context so as to accommodate multiple conditions for inheriting landed property of father by daughter. If a father has one daughter only then the daughter may continue to enjoy rights over her father's property if she stayed with her husband in her father's village. The ownership continues till the family and its successors continue to live in the village. If a father has two or more daughters then as a principle the first daughter may be asked to take ownership over the property. If the first daughter disagreed to take over the ownership then it may remain open to other daughters. If all daughters wanted to take shared ownership over father's property then that may also be approved. The different case studies cited on this context in previous chapters provide the detailed conditions under which such conditional ownership is granted.

In the customary law of both the tribes as regards to property ownership by women it is clear that the women in matter of fact are never considered *de-jure* owners under the purview of customary law. They continue as *de-facto* owners provided that they live in the same village after marriage. After several generations her successors may be considered *de-jure* owners of the concerned land. However, it must be noted that the customary law only operates within the domain of such lands which are still under community ownership against which individual records of right have not been settled. The inheritance of landed property against which the records of right have been settled, in the present situation, does not come under purview of customary law as the mainframe law has taken over it, for instance in the lines of the amendments made to the Hindu Succession Act, 1956.

The amendment to the Hindu Succession Act, 1956 has defined the rights of Hindu women to property and has conferred rights on them which they did not enjoy previously. The most outstanding features of the law is that it has placed both the sons and the daughters on an equal footing by virtue of which they can share the property of their parents in equal proportions. In tribal societies the rules of law are not strictly followed. Particularly in remote places far away from the Government headquarters, they take recourse to traditional customs and ethical principles or deciding cases of inheritance. For example, among the Dongaria Kandha and Paudi Bhuyan, the daughters do not get any share from the immovable assets of the parents. In case of no male issue the nearest relations of the father inherit the property except where the father leaves a 'will' for the daughter. Further, the daughter may claim the property if her husband stays with her at the residence of her father. In course of time her sons inherits everything belonging to their maternal grandfather.

### **Land pooling and land allocation**

In the case of both the tribes the village council is considered the owner of all the lands and particularly the swiddens leaving behind the lands that have been settled in favour of tenants. The customary law of both the communities observes that one who does not cultivate the inherited parental property for many years together then his rights over the property would be forfeited and restored to his kin members. The customary law also provides that the swiddens are part of the common pool resources of the community residing nearby. Subject to the approval of the village council the forests are cleared and the swiddens are distributed by the village council to the needy households. Any family having possessed a swidden must cultivate it regularly. If the land is not cultivated regularly then the village council may take over the land to its disposal.

The Paudi Bhuyan customary law provides for securing patches of land under community ownership which may be distributed to families on case to case basis. The law also provides that if a person to whom the community allocated land does not cultivate the land and leaves it abandoned for long time then the land is taken over by the village council to its possession as Bhogara land and utilize it for common purposes or for distribution to needy families. Similarly, the land of those who are evicted from the village for their act of violating the traditional norms of their society shall be taken over by the village council and pooled under the denomination Bhogara land.

The village council gets a supreme stature for the fact that the communal land is owned by it and it allocates lands to the households in the village. Thus the village council becomes the custodian of the customary laws applied in the context. When customary law relating to social and cultural life is violated by any household the village council may order for disowning the person from the said land and pool the land to be allocated to another person who is found needy. This is a good aspect in the community level customary law as it accommodates the provisions for punishment and pity, disowning people from landed property and allocating to the needy. Thus, the customary law is envisaged to continue till the land ownership is held by village council.

### **Current scenario, challenges and future of Customary Law**

A vast body of customary law of tribal communities on property inheritance and land tenure systems has already been forgotten or has remained out of use through the course of socio-economic change and development in the tribal communities on one hand and through the course of implementation of the revenue laws on the other hand. In a time line sequence, the customary laws before the settlement processes and afterwards have become different. After the settlement processes the domain of usage and application of tribal customary law in relation to property inheritance and land tenure has shrunked to a great extent. The community ownership over land on settled lands has ceased to operate. However, because of the functioning of traditional village councils and traditional justice administration systems customary laws have the existence in bits and parcels.

In both the communities studied, the Paudi Bhuyan has taken its own initiative to codify their customary laws. A translated version of their codified customary law, presented in chapter 5 indicates that much of it is in use in socio-cultural spheres, especially for marriage, incest, religious violations and such. The codified customary law is apparently silent on property inheritance and land tenure systems. The Paudi Bhuyan leaders perceive that they may not need to enforce their customary law on the matters of land as the revenue laws have become supreme. The Dongaria Kandha who have not made any initiative to



document and codify their law are of the view that their customary law would continue to be in place till all the lands are settled and records of rights are prepared, after which the revenue law would take its course.

Due to technical errors in methods applied during settlement processes some lands remained unsettled and the traditional village councils still exercise their ownership on such lands. In future, if another settlement process is done using latest technology and precision methods and records of right are settled then the customary that are relevant today may not prevail any further. Further, the way at which the political scenario has been changing giving relatively lesser space for traditional self rule systems it is apprehended that the traditional socio-political systems of the tribal communities might diffuse in the mainframe law governing tribal self rule.

The tribal leaders are perceiving that their customary law got a face lift with the coming up of Forest Rights Act in particular. To take benefit of provisions under the Forest Rights Act they needed to recollect their customary law and make use of it to claim individual rights, community rights and habitat rights. However, the apprehension is that after the claims under Forest Rights are settled the customary laws relating to ownership over lands would cease to function and the customary laws may need to be modified and focus on management of common pool resources. Thus there is still some hope that the customary laws would continue to be there and be applied in the socio-cultural way of community life and management of common pool resources. So, customary laws are now on a dynamic trend.

## Recommendations

From the study on customary laws and usages among ST communities of Odisha and their implications for making modification in land laws relating to property, inheritance and land tenure of the tribes- Dangria Kandha & Paudi Bhuyan the following recommendations may be made for properly transacting customary law with the formal laws.

1. Tribal women should be guaranteed their individual ancestral ownership and inheritance rights as per customary law or laws of the state whichever are recognized as more gender just
2. Customary laws relevant to sustainable use of village common assets may be properly documented and encouraged to limit the scale of extractive use of forest and exploitation of common pool resources.
3. The state government should promote and sponsor research and documentation of gender disaggregated data, gender just customary practices and divergence between customary laws and basic human rights.
4. The landmark references of village boundary, traditional use zones, ancestral domain, inter-village-community resources need to be mapped out on revenue maps. This would serve the purpose of a good baseline reference of existence of customary laws.
5. Both the tribes have clear notion of their environment and the parts of it in the context of ownership by family, punja, clan, mutha, village, Pirh etc., it is important to map out the tenurial arrangements under customary law so that it would be easier to handle advocacy for the cause of the tribes. This would be a tedious task, but interventions in this direction may be initiated by concerned micro-projects.
6. The Dongaria Kandhas and Paudi Bhuyans have clear landmark references of the forests they have been protecting since ages and village-wise forest areas have also got appreciation under their customary law. Because the customary law is strictly adhered to, hence there is very little conflicting situation over community forest lands. This provides a very good opportunity for making claims under CFR. The tribes may be provided technical help to claim their customary resources under FRA.
7. The Forest Land Settlement need to be expedited and settled through the enabling provisions contained in the Forest Rights Act. The claims granted under Forest Rights Act are non-alienable, non-transferable, non-mortgagable and non-leasable, and hence its asset value remains limited to the land use only. The people hardly can take a loan keeping the land as collateral. Hence, that is no solution to the errors made during settlement processes. Requirement of another settlement process with sophisticated precision methods to measure up to 30% of slope is thus recommended.

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## Key Informants

- Barika Behera, President Pabudi Pirh, Village: Jamurdihi
- Sonu Dehuri, Village: Nagira
- Dasarath Pradhan, President Atas Pirh
- Dasarath Pradhan, Lunaghar Matha
- Bishnu Charan Dehuri, President Keonjhar Pirh, Village: Kuskula, Keonjhar
- Kalia Dehuri, President Dadan Bar
- Niranjan Dehuri, President Sri Sarakhand Pirh
- Rapani Dehuri, Mandal President
- Purna Chandra Dehuri, District President, Keonjhar
- Pati Dandapat, State President Bhuyan Pirh
- Arun Nayak, President, Maa Ramadevi Pirh, Village: Gurusang
- Kandara Dehuri, Priest of Ramadevi Pirh, Village: Saranakote
- Debidhar Pradhan, Village: Debichua
- Bhabesh Kar, Kirti NGO
- Sardar Bilua Nayak, Vill: Dhokamunda, Mahasardar of Battis Bar of Sundargarh & Sardar of Palmora Pirh
- Duana Giri, Village: Budhakhaman
- Jethu Dehuri, Former President Atas Pirh, Village: Kadakala, Keonjhar
- Ananta Charan Nayak, Village: Bandhabhuin
- Bharat Dehuri, Village: Dudiani
- Key informants (Dongaria Kandha)
- Golaka Sikaka, village Khambesi, Bissamcuttack, Rayagada
- Suresh Wadaka, village Khambesi, Bissamcuttack, Rayagada
- Nabaghan Wadaka, village Khambesi, Bissamcuttack, Rayagada
- Madan Wadaka, Mandal President, Bissamcuttack Mandal, village Khambesi, Rayagada
- Daitari Kadraka, village Kadraguma, Bissamcuttack, Rayagada
- Katu Jakesika, Kuduveli Padar, Bissamcuttack, Rayagada
- Mandra Jakesika, Kurli, Bissamcuttack, Rayagada
- Tunia Jakesika, Kurli, Bissamcuttack, Rayagada
- Drinja Jakesika, Sarapanch Kurli GP, Bissamcuttack, Rayagada
- Ramesh Chandra Nalla, DKDA, Chatikona, Bissamcuttack, Rayagada