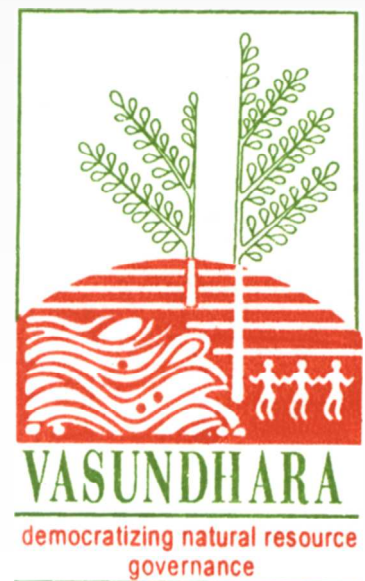


DEV/ODG

Reports and Policy Papers

‘Historical Injustice’: Forest Tenure Deprivation and Poverty in Orissa

**Kundan Kumar, Sricharan Behera, Soumen Sarangi
and Oliver Springate-Baginski**



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Forest Tenure Deprivation and Poverty in Orissa

**Kundan Kumar, Sricharan Behera, Soumen Sarangi and
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Glossary

<i>Abada Ajogya Anabadi:</i>	Non-culturable 'waste land': land deemed unfit for cultivation and under the legal control of the Forest Department.
<i>Abada Jogya Anabadi:</i>	Culturable 'waste land' legally categorized as government land.
<i>Anabadi:</i>	Common land; may be either fit or unfit for cultivation.
<i>Bethi:</i>	Unpaid labour.
<i>Bhogra:</i>	Land allocated to village headman or landlord in lieu of his administration of the village for which he didn't have to pay rent.
<i>Brahmottar:</i>	Land given free of rent to a Brahmin.
<i>Bujharat:</i>	The checking of entries made by <i>Amins</i> by superior officers during settlement operations.
<i>Chowkidar:</i>	A village watchman and messenger
<i>Dongar:</i>	Hills slopes used for cultivation.
<i>Gaontia:</i>	The village headman responsible for collect village revenue for feudal elites or the state.
<i>Gochar:</i>	Common village land reserved for grazing.
<i>Inam:</i>	Grant of rent-free land.
<i>Inamdar:</i>	Holder of rent-free land given on service tenure.
<i>Jagir/ Jagri:</i>	Rent-free land granted in return for service
<i>Jagirdars:</i>	Persons holding land free of rent in consideration of their services to an individual or the community.
<i>Jhankar:</i>	A village functionary in Western Orissa who assisted the village watchman and acted as the priest of the village deity. His office was partly affected by the Orissa office of Village Police (Abolition) Act, 1964, according to the provisions of which 50% of the <i>jagir</i> lands held by the <i>Jhankars</i> was to be retained by them.
<i>Kabuliyats:</i>	A counter lease or agreement granted by the landlord in return for which the tenant agrees to pay rent.
<i>Kabuliyats:</i>	The lease document between the Thicadars (intermediary tenure holder) and the State for the village under the Tenure holder. Under the <i>kabuliyat</i> the intermediary holds the <i>thica</i> (contract) of an area for a period of fifteen years or till the next settlement.

<i>Khanapuri:</i>	Literally means filling in columns, the stage of preparation of preliminary record of rights in settlement operations.
<i>Kharposdar:</i>	A person in charge of maintenance grants or allowance.
<i>Kharposdaris:</i>	The system of maintenance of grants or allowances.
<i>Kishtwari:</i>	The first stage of preparation Record of Rights in settlement operations.
<i>Malguzar:</i>	Revenue payer. Proprietor directly responsible to the State for the revenue of the land they own.
<i>Mamuls:</i>	Customary system of payment of land revenue in cash or kind by the tribals to the Muthadars and sub-ordinate Mutha officials.
<i>Marfatdar:</i>	Agent, trustee.
<i>Meriah:</i>	The practice of human sacrifice.
<i>Mutha:</i>	A subdivision of a <i>Zamindari</i> estate. An administrative unit consisting of few villages for collection of revenue.
<i>Muthadars:</i>	A person in charge of the administration of a Mutha.
<i>Nazarana:</i>	A tribute used to be paid to the ruler. Gifts paid by Village headman to the state in addition to the fixed rent for the village
<i>Nij-jote:</i>	The private land of the proprietors or proprietary tenure holder.
<i>Parajas:</i>	The tenant cultivators
<i>Patta:</i>	A lease given to a <i>raiyat</i> showing his land and his rent and the period for which it was fixed.
<i>Peshkush:</i>	Quit revenue
<i>Podu:</i>	Shifting cultivation on hill slopes with burn and slash methods.
<i>Rakhita:</i>	A category of land reserved for specific use.
<i>Ryot/ raiyat:</i>	The land owner-cultivator.
<i>Sanad:</i>	A treaty or agreement. A grant; a charter, a document conveying individual titles, privileges, offices, land.
<i>Sanja:</i>	A contract, and is used for rent in kind fixed at a certain quantity, which is payable whatever the outturn may be.
<i>Sarbarakhars:</i>	The tenure holder with quasi-proprietary rights, holding under the proprietors. A village headman appointed for

	collecting land revenue for a village or group of villages in a Government estate.
<i>Sarbasadharan</i>	land: The land meant for the use of the public/ community and not for the individual personal use.
<i>Sukhbasis:</i>	landless families
<i>Takoli:</i>	A tribute
<i>Umra:</i>	The middle man responsible for collecting revenue for a cluster of three or four villages.
<i>Yubak Sangha:</i>	Youth group
<i>Zamindar:</i>	Landlord; proprietor of land directly responsible to the state for the revenue of the land he possessed.
<i>Zamindari:</i>	The tracts of land constituting the possessions of a <i>zamindar</i> (landlord).

Abbreviations

AAA	Abada Ajogya Anabadi (Un-Cultivable Waste)
AJA	Abada Jogya Anabadi (Cultivable Waste:
BPL	Below Poverty Line
DPF	Demarcated Protected Forests
FD	Forest Department
FGD	Focus Group Discussion
FSI	Forest Survey of India
FSO	Forest Settlement Office/r
GoI	Government of India
GoO	Government of Orissa
MoEF	Ministry of Environment and Forest
NFFWP	National Food For Work Programme
NTFP	Non-Timber Forest Produce
OGLS	Orissa Government Land Settlement Act
OLR	Orissa Land Reforms Act
OPL	Orissa Prevention of Land Encroachment Act
OSATIP	Orissa Scheduled Areas Transfer of Immovable Properties, Regulation.
OTELP	Orissa Tribal Empowerment and Livelihood Programme
PCCF	Principal Chief Conservator of Forests
PESA	Panchayat Raj Extension to Scheduled Areas
PRF	Proposed Reserve Forest
RF	Reserve Forest
RoR	Record of Rights
S&S	Survey and Settlement
SC	Scheduled Castes
SS	Sarbasadharan (Common land)
ST	Scheduled Tribes
UDPF	Un-demarcated Protected Forest
VSS	Vana Samrakshana Samiti

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The authors

Summary

Forest tenure regimes are critical determinants of the livelihood security of as many as two hundred million rural people or more in India. However the processes of settlement, allocation and protection of tenure rights over the last century have been fundamentally flawed, resulting in profound negative livelihood impacts for this major part of India's population.

Redress of forest rights deprivations has received surprisingly limited attention, and indeed the plight of rights-deprived forest-adjacent populations deteriorated to a crisis point in 2002 with the Ministry of Environment and Forests' order to evict all 'encroachers' (which is how many rights-deprived citizens are seen in law) in a matter of months. This led to mass mobilisation of the rights-deprived groups ultimately resulting in the passing of the 'Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act' 2006. This seminal Act, a landmark of progressive Indian legislation, finally acknowledged that an 'historical injustice' had been committed and made provision to redress it. However its implementation still faces a minefield of arcane administrative complexities, diverse location-specific scenarios and opposition from entrenched interests.

In order to help clarify the specific nature of forest-rights deprivations and the historical processes which have given rise to them, this paper analyses the prevailing status of forest tenure and rights in areas of Orissa. The study was commenced shortly before the Act was passed, as part of a larger project looking at problems of inequity in forest management in India. The paper sheds light on the manner in which the Colonial state created 'forest lands' as a legal category in the 19th Century, and the close conjunction between forest tenure and access and the wider agrarian laws, policies and processes. It also links the macro-level policy and legal processes to the local micro-level outcomes.

By land rights we mean to signify the formal recognition and legitimation under the prevailing juridical system of an individual or group's control over and / or use of a resource. This may include private or collective rights over land and trees thereon for product collection, cultivation and / or alienation (i.e. the right to trade the land).

Given the inherent complexity of the land and forest tenurial systems in Orissa, the study focussed on two districts to contrast the state's different ecological, social, demographic and historical contexts. Kandhamal district represents tribal dominated hilly, forested areas having widespread shifting cultivation, whereas Bolangir district represents the more settled agricultural land use in plains or

plateau landscapes, having less forest cover and lower tribal populations. State level assessment of the evolution of forest and land tenure was first conducted using archival data and records. District level assessments were then made in both of the study districts, along with case studies of two villages in each of the districts.

The study found that as both customary and feudal tenure systems had been superseded by the formal colonial and post colonial juridical and administrative systems of the Revenue and Forest Departments, fundamental flaws in the formalisation of forest tenures led to a widespread loss of tenure and use rights, especially for tribal communities and the poor, in a number of specific ways:

1. In many areas settlement of forest rights has never even been addressed by the state. Post-Independence, many forests containing tribal populations were 'deemed' Reserved Forests, but the due process of rights settlement was not subsequently conducted, leading to *de facto* extinguishment of all legal rights.
2. Where rights settlement processes have been conducted, both during the Forest Department's creation of 'legal forests' and through the Revenue Department's separate agricultural land revenue settlement processes, they have been profoundly flawed in several ways (e.g. verifiable land claims of local cultivators ignored). This has led to the unjust loss of tenure and access to land and forests, particularly for tribal groups (observed in Kandhamal and similar districts).
3. Traditional shifting cultivators have generally been denied rights as a policy, their lands converted to 'legal forest' without observation of the due legal process. The state has annexed the land, and expropriated the cultivators. (A phenomenon seen in Kandhamal and similar tribal dominated districts).
4. In forest landscapes the low availability of non-forest land for agriculture has inevitably led to the extension of agriculture into forest areas. However cultivation on forest land has often not been regularized according to the normal processes and existing laws and policies (observed in both Kandhamal and Bolangir districts).
5. In the more stratified unequal caste-based local societies typical of western Orissa a local politics of social exclusion over land and forests has occurred within communities, with elites taking advantage of state processes such as land reform to entrench their control (observed in Bolangir and similar districts).

These injustices, perpetrated on many millions of the poorest households primarily by the state, have led to impoverishment and livelihood insecurity. As illustrated in the case studies in this paper, households have had their ownership and access to the resources on which they depended for their traditional livelihood practices restricted or extinguished, and have been persecuted and

punished for continuing to use them. They have thereby become poorer (in terms of reduced assets and incomes) and more insecure and vulnerable.

Recommendations for action:

That these deprivations have persisted and even worsened in the post-Independence period reflects very poorly on forest governance in India. The concluding section of the report discusses these broad issues in detail, and recommends actions to address the situation. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides comprehensive legal basis for redressing most of the forest rights deprivations scenarios. Its full and proper implementation should obviously be treated as the highest priority. There are several other progressive pieces of legislation that also require full and proper implementation in Orissa, such as the Panchayat Extension to Scheduled Areas 1997, and provisions for land reforms as well as forest land settlement. However, as the pre-FRA legal provisions have often been ignored or diverted by interest groups unwilling to allow reform is it reasonable to anticipate similar problems with the FRA. Frustration on the part of the marginalised groups has periodically been expressed outside of the political mainstream, in extremist left wing movements. The key challenge in Orissa is how the marginalised rural poor can secure their legal rights, and how the state can *be made to* respond to their livelihood needs and democratic political aspirations.

Land and forest access are some of the most critical developmental issues in Orissa's rural areas and no virtually rural development intervention aimed at poverty alleviation and social justice can be effective without addressing these issues. There are three main areas where action is needed:

1. A government review of rights deprivations in previous forest reservations and declarations, especially in tribal areas, and comprehensive redress of those rights deprivations according to the Forest Rights Act 2006, and improved access to justice for the rights-deprived households and communities in order to secure those rights.
2. Recognition of community rights on forests within traditional forest boundaries, also according to the Forest Rights Act 2006.
3. Strengthening of local community institutions and the promotion of their inclusiveness, equity, and respect and support for customary tribal cultural practices, according to PESA 1997 and the Forest Rights Act 2006.

For citizens and civil society groups, including community-based and non-governmental organisations:

We believe the momentum achieved during the political mobilisation for the Forest Rights Act campaign needs to be continued, for the tribal groups' to secure

their legal rights. Grassroots awareness-raising, particularly regarding the legal basis for rights, is essential. It is likely that legal 'test cases' will emerge and need to be supported (for instance already the FRA is being used in tribal land / mining contestations).

For government policy makers and public servants:

Effective implementation of the FRA 2006 will require a detailed understanding of the previous problems in rights settlement processes. Implementation cannot be completed overnight but is likely to require a long term process and the involvement of multiple stakeholders. Additionally those most marginalised and rights-deprived groups are often the more remote. Thus significant resources will be required to reach them and involve them in the process. Working with committed civil society groups is likely to be mutually beneficial.

The effective implementation of the Forest Rights Act, 2006 will require effective coordination between the SC&ST Welfare Department, Revenue Department, Forest Department and Panchayati Raj Department in order to ensure support for settlement of forest tenure issues, which falling across the ambit of all four departments. Regular progress meetings of the State Level (FRA) Monitoring Committee to review implementation status will facilitate coordination and help in issuing the necessary Government Orders to tackle problems relating to implementation. At the regional or district level, coordination between these departments is also essential for providing institutional and capacity building support to the committees constituted under the FRA to settle rights. Additionally, provision of separate human resources for each community development block under the Integrated Tribal Development Agency (ITDA) and their proper capacity building regarding the FRA will go a long way in ensuring faster implementation of the Act.

For academic institutions:

Academic institutions in Orissa can help play a supportive role through leading Participatory Action Research projects to clarify the current status of forest rights deprivations, identify the opportunities for redress and document actual processes. They can also bring together different stakeholders such as civil society groups and government staff, on neutral ground to improve mutual understanding and constructive relationships.

For international donors and their forest sector projects:

There have been two major forest sector projects in Orissa in recent years: the UK Government DFID 'Orissa Forest Sector Support Project' (2006 – 2008), and the Japanese Bank for International Cooperation supported 'Orissa Forestry Sector Development Project (2006 – 2013). These projects, counter parting with the

formal forestry administration without an explicit programme to redress forest rights deprivations, have partly served to further entrench the 'historic injustices' of forest rights deprivations. Pre-2006 forest sector intervention strategies are now outmoded by the Forest Rights Act. Donors must therefore now go beyond seeing Forest Departments as the sole responsible authorities for forest areas. Whereas policies and practices followed by the Forest Departments have excluded poor tribal and other forest dwelling communities from forest governance systems, (as discussed in this paper) reforms including the FRA 2006 means that local communities now have substantial constitutional rights to forest control and management. If donors are to 'walk the talk' of their pro-poor rhetoric then they must now engage with the Ministry of Tribal Affairs, Tribal Welfare Departments and forums of community forest protection groups rather than focussing only on the Forest Department. And if donors are sincerely interested in supporting the achievement of the Millennium Development Goals in Orissa, they must now review their intervention strategy in the light of the FRA. Donors should emphasize the inclusion of forest dwelling and forest protecting communities in the process of forest governance in real terms through their alignment with local government structures.

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Section I: Understanding Forest Tenures

1. The Context of the Study

1.1. Rationale and Aims of the study

With almost 40% of Orissa's land area categorized as forest lands, forests are amongst the most important land uses in the state. The social use and tenurial status of lands under forests have changed significantly over the last two centuries. On the one hand, vast areas of forests have been converted to agriculture and other non-forest land use, especially after independence. Over the same period the State has sought to increase its control over forests.

Despite extensive land conversion for agriculture, even now almost 50% of Orissa's area can be categorized as "*forested landscapes*", where forests are the predominant, even if not the exclusive, land use. Most of the forested landscapes are the habitat of Orissa's tribal population which, at 22%, forms a substantial minority of the state's population. The term *forested landscape* is deliberately introduced here to emphasize that forests are not stand-alone elements of landscapes, as is commonly implicitly assumed in forestry discourses, but in fact are closely integrated with other landscape elements such as agricultural land, grazing areas and people's habitations. This is especially true of Orissa, which has a high level of forested areas, where habitations are scattered within forests and where shifting cultivation has been a traditional way of life for most tribal communities. Thus forest as a land use complements and competes with other land uses, and analysis of forest tenure is impossible without addressing how forest tenure has evolved in tandem with the tenurial systems for other land uses such as agriculture. Given that one of the most important values of forest land is its alternative land use for agriculture, analysis of the interaction between agricultural land and forest tenure is essential in the context of India, with its extremely high population density.

This study attempts a preliminary exploration of the following issues:

1. The historical evolution of forest tenure in Orissa within the larger context of land and natural resource administration
2. The implications of the forest tenure and administration systems on people's access to natural resources, including land, and their livelihoods

Secondary analysis shows that the legal construction of forests and the creation of the forest estate in Orissa, whilst enriching the state through appropriation of extensive forest resources, precipitated intense conflicts with the local inhabitants whose livelihoods and wellbeing were severely adversely impacted. Many of these problems have intensified over time, and have a direct linkage to the high

levels of chronic and acute poverty in forested areas. The study therefore tries to delineate the contours of the construction of “legal forests” and its implications on resource rights and access for local societies.

The twin processes of the creation of ‘legal forests’ and the territorial disciplining of landscapes through the formalization of property regimes through survey and settlements took place more or less concurrently in the forested areas of Orissa and are closely intertwined. These processes are also embedded in the local political economy. Both these processes must be taken together to understand the present situation of resource rights access in the forested landscapes. This study examines the processes, their interaction with each other and their implications for landscapes and people, through local case studies as well as analysis at districts level.

Local people have responded to these processes in different ways, which have included: insurrection and revolt; ‘everyday’ resistance, subversion and other ‘weapons of the weak’; adaptation and internalization. Some of these responses have the potential for unlocking innovative forms of tenurial arrangements, which may be more democratic, efficient and equitable than the current arrangements.

1.2. Methodology of the Study

The study aims are addressed through a case study approach, taking two districts and four villages within them for case studies. Given the limited scope and time frame of the study, and the highly complex history of tenurial systems in Orissa, this represents only an initial effort at delineating the key issues and to provide direction for future work.

The study was conducted over 2006-2007 and involved documentary review and field study.

Documentary sources including policy documents, census data, working plans for the relevant forest divisions, district gazetteers and survey and settlement reports. These were analysed to get an overview of the forest tenure and land tenure systems. The laws and policies related to forests and land settlement were also referred to.



Map 1: Orissa and Position of Study Sites

(Source: google earth.com 2007)

Field level data collection was carried out through four micro level case studies. Although initially six village level case studies were proposed spread over three districts, only four case studies in Bolangir and Kandhamal districts could be carried out in detail, and two villages in Sambalpur district were also visited for a shorter period of time to get a general idea of the issues involved.

The case study methodology involved study of record of rights and other secondary data for the village, group discussions and individual interviews, along with transects of the village and forests and spatial mapping.

One constraint in the study was the sampling of districts and villages, as these had already been pre-selected as cases for the wider study within which this work was conducted (see Sarap 2007, Sarap and Springate-Baginski 2008). This constrained sampling of locations to the two districts of Kandhamal and Bolangir. However it is an indicator of the magnitude of the complex problems of land and forest access in forested landscapes in Orissa that even these case studies provided rich and informative typologies of problems. The issues which emerged in these two districts were very different:

- Kandhamal is an exemplar of hilly, tribal-dominated landscapes, where there is very high livelihood dependence on forests and where forest by far forms the most dominant land use. In Kandhamal the major problems found related to non-recognition of rights of cultivators on customary land categorized as forests, or in conversion of customary claimed land into forest land.
- Bolangir on the other hand exemplifies non-tribal peasant dominated landscapes where forests are an important, though not the primary land use, and where the per capita forest availability of forests is much lower. In Bolangir, which has a much longer history of survey and settlements and construction of legal forests, the legitimacy of legal forests itself was little questioned. Rather the main issue has been “encroachment” on forest lands, in the context of typically inequitable, agrarian politics.

At the same time as conducting this study the land team of Vasundhara has been involved in a number of parallel research processes on land and forest tenure issues in Orissa, which has helped understand of the issues in the wider context. This includes detailed land rights mapping of two watersheds in Kandhamal and Kalahandi districts, brief case studies in different parts of the State which have been brought to our notice. The learning from this research has also been incorporated (with suitable citation) to the extent that they complement the case studies taken up directly under the study.

2. The Historical Construction of Legal Forests in Orissa

As we come to the more concrete field level we enter a reality much more messy and unclear than the historical and administrative narratives might suggest. Orissa’s ‘legal forests’ are formally classified on paper, and Orissa’s physical forests have been formally surveyed, yet the extent to which these categories actually coincide remains surprisingly uncertain. Furthermore, the majority of Orissa’s ‘legal forest’ is paradoxically, for historical reasons, not even under the control of the Orissa Forest Department as one might expect, but rather under the Revenue Department. This section discusses the historical processes through which these rather counter intuitive outcomes emerged.

According to official data, Orissa contains 58,135 sq. km of ‘legal forests’. We know this because in 1997, based on the definition of forests given in the FCA 1980, the Government of Orissa submitted an affidavit to the Supreme Court giving data on the different categories of forests and their extent. This can be taken as the ‘official’ view on the current extent of forests. As per this affidavit, the extent of various categories of forests in Orissa is:

Table 1: Legal Forests in Orissa

Type of Forest	Area (km ²)	Under control of:
Reserved Forests (RF)	26,329	Forest Department. Declared as RF under Section 21 of Orissa Forest Act, 1972 or <i>deemed</i> as Reserved Forests under Section 20(A) of Indian Forest Act, 1927
Demarcated Protected Forest (DPF)	11,685	Revenue Department. Declared as Forest under section 33 of OFA, 1972 or <i>deemed</i> as Protected Forests under Section 33(4) of OFA, 1972
Undemarcated Protected Forest (UPF)	3,838	Revenue Department
Unclassed Forests (UF)	21	Revenue Department
Other Forests	16,261	Revenue Department. Legal status is not clear.
Total Forest Area	58,135	

Source: GoO 1997

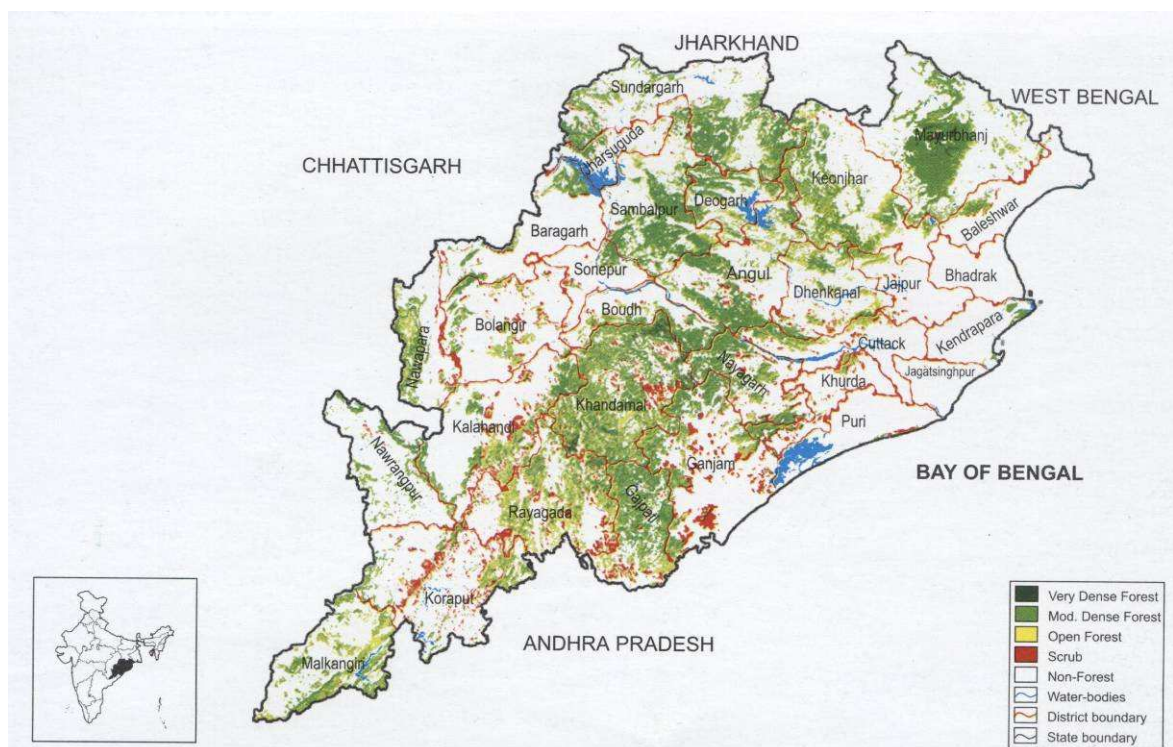
As will be discussed later, even these figures are contested, and there are many shortcomings in their calculations. These 'legal forests' do not necessarily correspond to actual physical forests, and there are large areas of "legal forests" which don't actually contain 'physical forests', perhaps because the trees have been cut, or perhaps because there were never trees and it was grazing land labelled as 'waste' by administrators. The classification of physical forests, by forest cover is given in Table 2 below and illustrated in the map.

Only 48,366 sq. km. of legally defined forest land has forest cover of 10% or more (FSI, 2003). If we assume these forests are on the 'legal forest' estate that would leave almost 10,000 sq. km. which has a crown cover of less than 10% i.e. either they are scrub forests or have no forests at all.

Table 2: Extent of Orissa Physical Forests in, by Forest Cover (Sq.Km.)

Forest Type				Additional Tree Cover in Non-Forest Areas
Very Dense	Moderately Dense	Open	Total	
All lands with >70% canopy density	All lands with > 40% canopy density	All lands with tree cover of 10 – 40% canopy density		
288	27,882	20,196	48,366	6,381

Source: Forest Survey of India 2003



Map 2: Forest Cover of Orissa

Source: Forest Survey of India 2003.

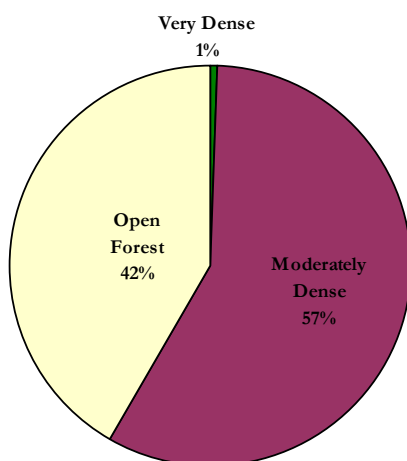


Figure 1: Physical Forests in Orissa (Forest Cover Classification as per 2003 FSI data)

Source: Forest Survey of India (2003)

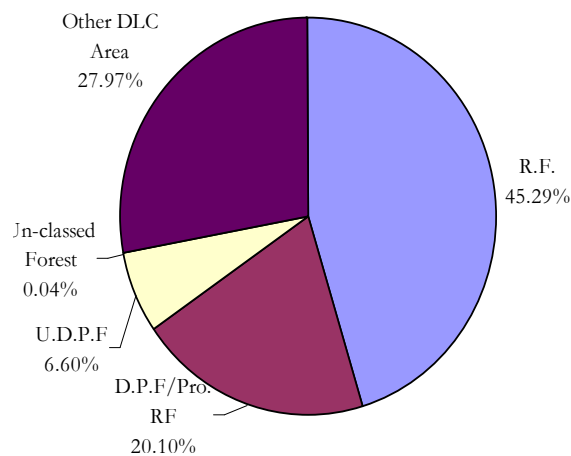


Figure 2: Legal Forests in Orissa: Forest Area by Legal Status

Source: Orissa Forest Status Report 2003-04, PCCF, Orissa

2.1. The Construction of Legal Forests in India

The term 'forest', apart from signifying a type of land use, also has a legal meaning in various laws. This legal "forest" is socially-constructed, framed by laws, policies, procedures and organisations, and implies specific rights regimes which are a product of historical / political processes. The legal construction of forest influences the physical realities of forested landscapes and the relationships between people and forests and deeply affects the livelihoods and wellbeing of people who live in and around the forests, as it not only categorizes certain elements of the landscapes as forests, but imposed varied regulations and enforcement mechanisms to define what is permissible and what is prohibited for different groups. This nexus of laws, policies and procedures have deeply and differentially impacted on the lives and wellbeing of large numbers of rural people.

In India, 'forests' as a legal category were constructed in the 19th and 20th Centuries during the colonial and post-colonial periods. The historical genesis of forests as a legal land use category and the creation of a centralized bureaucratic structure to manage forest resources have been discussed by a number of authors including Ramachandra Guha in context of Uttaranchal (Guha 1990), Sivaramakrishnan in context of West Bengal (Sivaramakrishnan 1999), Akhileshwar Pathak for an Indian overview (Pathak 1999), Mahesh Rangarajan for Central India (Rangarajan 1998). Unfortunately, only one researcher, Ramvir Singh, has tried to address this issue for Orissa (Singh 1997), although this single piece of research adopts the official paradigm of forest construction and is therefore of limited use to those trying to gain objective and critical insights.

The creation of legal forests by the British was also deeply affected by laws and policies laid down for administering land and for controlling local societies. Along with land laws and policies, the creation of legal forests was an integral part of the 'territorialisation' of landscapes, (Peluso and Vandergeest 1995) which the British used to discipline and control landscapes and people. During the Colonial period, most of the nominally independent princely states¹ also sought to introduce legislation based on forest laws of the British ruled areas (Ramdhvani 1947).

The key instruments in the creation of the forest estate were the various forest acts passed by the British, starting from the first Indian Forest Act, 1865. This Act empowered the colonial government to constitute by notification government forests out of any so-called 'wastelands' or other land covered with trees. It was

¹ There were as many as 650 nominally sovereign "princely States" in India, who owed their allegiance to the British and were effectively subservient to them. They often had their own rules for land and forest governance, normally based upon the Laws promulgated by the British in areas directly ruled by British.

replaced by the more comprehensive Indian Forest Act in 1878, which included provisions for settlement and admitting of the rights and privileges of people, and provided for three major forest tenures i.e. Reserved Forests, Protected Forests and Village Forests (Singh 1997). This was accepted by all British ruled areas in India except in the Madras Presidency, which disagreed with the draconian powers, and developed its own law, the Madras Forest Act of 1882. The 1878 Act was replaced in 1927 by a new Indian Forest Act which remains in force until today. Additional legislations were passed after Independence, including the Forest Conservation Act, 1980, which expanded the categories of land defined as “legal forests” and made it more difficult to reclassify legal forests to any other category.

The various forest laws have been used to categorise 76.52 mha of land area (23.28%)² of India as “legal forests”. The process of categorization has been highly contested and problematic, and both during the colonial and post-colonial period, led to resistance insurrection and rebellions. Reservation of forests and the restriction imposed on use of forests were important issues in the freedom struggle in the forested areas, and remain so for extremist left wing groups still active.

2.2. The Construction of Legal Forests in Orissa

The current physical area of the State of Orissa resulted from the amalgamation in 1936 of parts of three British provinces, namely areas of Central Provinces, Madras Presidency and the original Orissa (which was under Bengal Province). Later, in 1948 and 1949 twenty four princely states were also merged with Orissa. The state therefore has a complex land and forest tenure history, since the parts from Central Provinces and original Orissa were governed by the Indian Forest Act, 1927, whereas those parts which came from Madras Presidency were previously governed under the Madras Forest Act, 1882. Almost all of the princely states had their own forest acts or rules based either on the Indian Forest Act, 1927 or the Madras Forest Act, 1882. In 1972, the Orissa Forest Act, was passed (mainly based on the IFA 1927), standardising the legal basis for forest governance across all Orissa.

The Orissa Forest Act, 1972 also defines two categories of forests, Reserved Forest and Protected Forests and follows the Indian Forest Act, 1927 in the processes of settlement of rights. Both the Madras Forest Act, 1882 and the Indian Forest Act, 1927, specified the due process of declaring “Reserved Forests” and “Protected Forests”³, which involved prior completion of a process of rights settlement. As

² States of Forest Report, Forest Survey of India Dehradun, 1999

³ The MFA, 1882, also had provisions for declaration of Reserve Land, Protected Land and Unreserved Lands, which was extensively used in the Madras Presidency areas of Orissa.

per the Orissa Forest Act, 1972, Reserved Forests can be notified only after settlement of rights. It also says that the Government can also declare any land which is the property of the Government as Protected Forest only ..

“[i]f the nature and extents of rights of Government and of private persons and village communities in or over the land comprised therein has been inquired into and recorded at a Survey and Settlement or in such other matters as prescribed”.

Thus *prima facie*, the forest laws provide strong protection for settlement of local people's and communities' rights before declaration of any land as forests. If these legal provisions had been respected and observed perhaps most of the current tenure problems would not have emerged. However, in many cases it is apparent that they have not been followed properly, and this has given rise to serious forest tenures and rights deprivations to local people:

- **Declaration of 'deemed' Reserved Forests and Protected Forests without subsequent settlement of rights.** The 'deeming' of a forest area is a provisional step prior to settling of rights in the 1927 IFA. In many areas of Orissa the settlement process has not been completed, particularly post-Independence and so the FD has treated the interim situation as permanent, as if rights have in fact been *de facto* extinguished.
- **Non-recognition of rights on land used for shifting cultivation.** Shifting cultivation falls between the 'legitimate' land uses of forestry and sedentary agriculture but has not been accepted as a legitimate land use in settlements. It has been treated by foresters as an undesirable practice to be excluded.
- **Improper settlement of rights on forest lands.** Even where the rights settlement process has been conducted many irregularities and obstructions have occurred, resulting in the deprivation of rights.

These factors have ensured that large areas of land have been categorized as forest lands without recognizing the rights of local communities on these lands (Kumar et al. 2005).

The passage of the Forest Conservation Act, 1980 (FCA), in an attempt by the Central Government to halt forest loss, compounded the problems related to non-settlement of rights, as it stated that no forest land may be diverted for non-forestry purpose without the permission of the Government of India. This has had the effect of freezing the status of many forest-related rights deprivations. Forest land is defined in the FCA as land recorded as forest land in any government records, and in 1996 by a Supreme Court order in the Godavarman case, the FCA's purview was expanded to all lands conforming to the dictionary definition of forests (i.e. land having forest growth) irrespective of ownership,

case. A more recent Supreme Court order⁴ of 2000 has also banned the dereservation of any forest land without their permission.

The outcome of this process is that once a land is classified as forest of any sort, it can't be used for cultivation or any other purpose without MoEF's permission, and ownership rights can't be given without Supreme Court's permission. This all-encompassing law implicitly assumes that categorization of land as forest has been previously conducted correctly as per the legal provisions and more important, according to principles of justice. This is an erroneous assumption which completely ignores the extreme diversity of anomalous situations that exist in relation to land and forest records in many parts of India, not least in Orissa (Kumar et al. 2005).

Policies relating to conversion of forests to agricultural land use were quite permissive till 1970s and in fact it was often encouraged even promoted by the State. For instance, more than one hundred thousand acres of prime forests were cleared in Dandakaranya area (Malkanagiri and Nowrangpur districts at present) to settle refugees from East Bengal. However, the easy conversion of forest land to agriculture came to a sudden stop with the passing of FCA, 1980. In Orissa, this sudden ban on the diversion of forest land for agriculture had serious implications as there was a large backlog of existing cultivation on forest land which hadn't been officially recorded as agricultural land, even though in most cases they were eligible for this under the existing laws. This included for instance forest land allotted to the thousands of people displaced by development projects such as Hirakud, Rengali and other dams.

In 2002, the problems of forest rights deprived citizens were further compounded when the MoEF issued a letter to all states and Union Territories conveying that the Supreme Court had requested the eviction of all forest-land encroachers within a period of five months. The attempts to enforce this directive by Forest Departments through coercion led to extreme conflict and numerous cases of injury and death. Though this blanket order was later withdrawn due to widespread protests, the process of removing supposed 'encroachers' has continued in many states.

This approach has serious implications for the Scheduled areas of Orissa, where hundreds of thousands of tribals continue practicing both settled and rotational cultivation (*podu*) on several hundred thousand hectares of land which has been officially categorized as 'forests'. It was this process that mobilised forest-rights

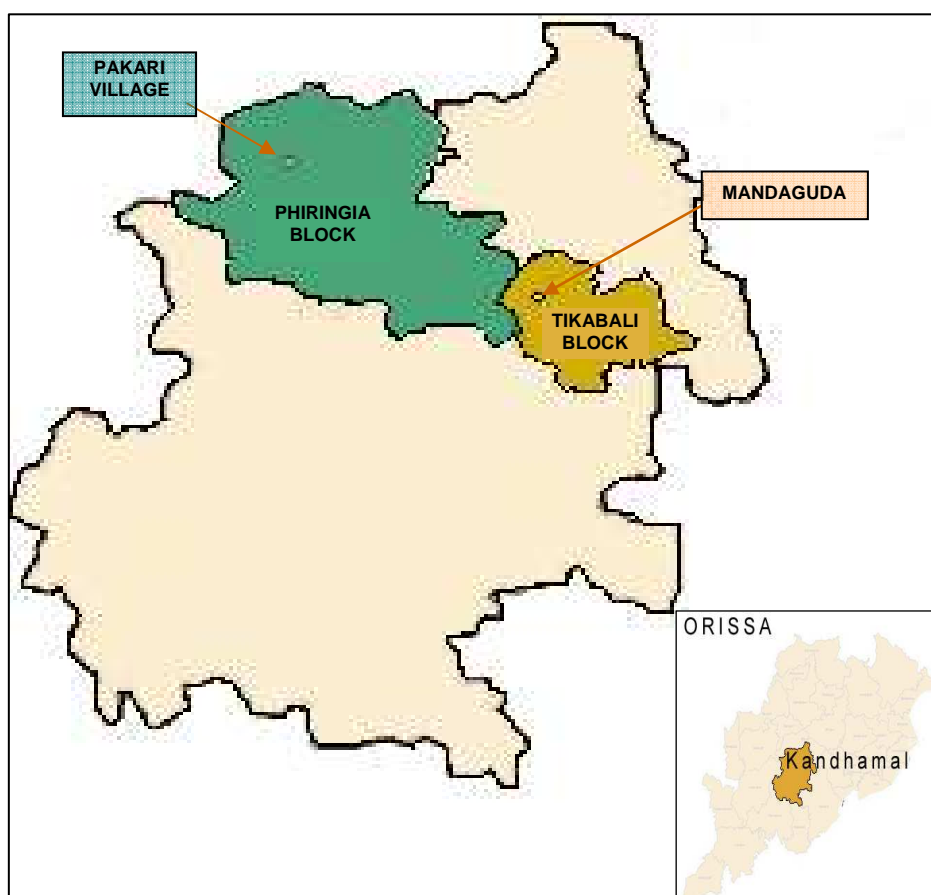
⁴ Supreme Court's order dated 13-11-2000 in Center of Environmental Law, WWF India v. Union of India, WP© no 337 of 1995

deprived groups around the country to demand justice, mobilisation that has ultimately led to the passing of the Forest Rights Act 2006.

Although the two case study districts and four case study villages don't touch on all the issues related to forest land tenure in Orissa, they do however illustrate the major aspects. Some other issues have been discussed in the conclusions sections through reference to other case studies taken up by Vasundhara as well as secondary literature and documents.

Section II: Kandhamal District - Reservation, Settlement and Shifting Cultivation in Tribal-Dominated Forest Landscapes

In this section we focus on Kandhamal District and two villages within it, Pakhari and Mandaguda.



Map 3: Locations of Case Study Villages of Kandhamal District

As we will see the forest and land situation in Kandhamal illustrates the dynamics of state 'territorialisation' and takeover of lands and forests in forested landscapes inhabited by tribal communities. In most other parts of mainland

India, these processes occurred in the colonial period. The uniqueness of Kandhamal and similar parts of tribal Orissa is that they went through these processes only after Independence in a democratic polity and with a Constitution which provides special protection to tribal interests in land.

In the case of Kandhamal, the Colonial rulers were in many cases more careful about tribal interests and autonomy in relation to the outcomes of the processes of Reservation and Survey and Settlement than the post- Independence dispensation. The implicit understanding of the British in not carrying out Survey and Settlement and reservation of forests in Kandhamal was that the tribal autonomy over their lands should be maintained. The enumeration of individual land ownership only owned by non-tribals through the Settlements in 1920s was also projected as an attempt to protect tribal land rights (i.e. to avoid bringing them under taxation).

The status of tribals, especially Kondhs, vis-à-vis land and forest rights, has worsened when compared to the Colonial period. This seems to be largely an outcome of the land categorisation and formalisation through the Survey and Settlements and forest demarcations/ reservations in the post-Independence period. Both post-Independence forest reservations/notifications and Survey and Settlement have completely ignored the customary land rights systems of the tribals. Shifting cultivation, the most important and extensive land use in Kandhamal district was deemed to be non-cultivation during the Survey and Settlements and occupancy rights over these lands were denied.

It is important to note that apart from the Reserved Forests and proposed Reserved Forests which lie outside the village boundaries, almost 50% of the land within village boundaries in Kandhamal district have been categorised as “forest land” during the Survey and Settlements, and the forest laws effectively ensure that the tribals and forest dwellers have no legal rights or claims on these areas. Three quarters of the land in the district, categorised as forests, admits no claims of rights or ownership of the tribal communities. The fact that much of this land is under actual occupation and cultivation by tribals is clearly shown in the case studies. In spite of the constitutional protection provided to tribal interests in land in this scheduled district, tribals in Kandhamal district still have no legal rights in 90% of the land in the district. This subversion of the Constitution has been achieved by defining tribal interests in land as being limited to land legally settled with them.

Even the rest of the Government owned land (Revenue Land) admits no community control or rights, and is completely under the control of the Revenue Department. The land laws allow only allow settlement of certain categories of

land (such as *abad jogya anabadi*) to landless persons and even this process is totally dependent on the initiative of the revenue officials.

Thus a huge gap exists within the reality of *de facto* land use and effective ownership on the ground and the *de jure* legal/official representation. The legal situation has emerged out of faulty legal construction of land categories which ignored prior claims and practices. This has inevitably led to conflicts and contestations as illustrated in the case studies. Mostly, given the legal powers vested with the state officials, they have managed to coerce and subdue the tribals, as seen in Mandaguda and Pakari. In other areas such as Balliguda, they have been less successful. However resentment and anger amongst the tribal communities continues to simmer and often underlies the increasing conflicts and political extremism in the area. The tribal communities, who claim all the land within their traditional boundaries, are very angry about the situation.

The increasing influx of non-tribals and their ability to grab tribal land illegally has aggravated these tensions. The First major Survey and Settlement guidelines allowed:

“all tribal land which was illegally held by non-tribals for more than 12 years under continuous possession to be settled as raiyati land with the non-tribals through the principle of adverse possession”

These provisions seem to have been misused on a large scale to settle land with non-tribals, and this is a further root cause of conflict between tribals and non-tribals in the area.

3. Kandhamal District Study

This case study illustrates how the State (both Colonial and post-Independence) has gradually ‘territorialised’ a tribal-dominated forested landscape, though poorly coordinated and conducted administrative processes, and in the context of prejudice against the tribals’ material cultural practice of shifting cultivation, have led to widespread deprivation of forest tenure rights and criminalisation of livelihoods.

The predominantly tribal Kandhamal district is located in south central Orissa, and covers 8,021 sq. km. It consists of forested hilly landscapes interspersed with habitations. The total population of the district in 2001 was 648,201 including 336,809 tribals (i.e., 51.96%)⁵. Of Kandhamal’s 145,676 households, 78% are

⁵ 2001 Census

estimated to living below the Government's notional poverty line, one of the highest figures for any district in India⁶.

The district has two subdivisions, Phulbani and Balliguda. Phulbani sub-division forms a broken plateau of about 510 meters above sea level, parts of which remains thickly forested. Villages lie in scattered clearings along the hillsides and in valleys, with many inaccessibly located on hilltops. The Balliguda sub-division varies from 300 to 1,100 meters elevation, with similar topography (GoO 1983).

The district was named after the Kandhs, the major tribal community in the area. Kandhs, Dravidians categorised as belonging to a 'Proto-Australoid' ethnic group, are believed to have occupied Phulbani forest tracts well before Aryan immigration⁷. Of the district's total tribal population 98.14% live in rural areas. Until the advent of the British, the Kandhs seem to have led a relatively autonomous traditional existence in the hilly, remote Kandhamal area, along with other communities known as Panos (or Dombs) and Goudas.

The Kandhs of Kandhamal District had historically-rooted reciprocal relationships with the Panos (who are classified under India's constitution as Scheduled Castes or 'SC's) and Goudas (classified as 'Other Backward Castes' or OBCs). Almost every Kandh village is inhabited by at least one Pano (who are also known as Domb) household. The traditional occupation of the Panos was to play music during the rituals and festive occasions, as well as to dispose of dead cattle and other domestic animals. The Panos adopted the rituals of the Kandhs and acted as their interface with the external world. Padel observes that

'an age-old mutual dependence between Kandhs and Dombs in which the later supplied cloth and ornaments and handled most of their other trade as well as interpreting for them, being bilingual in Kui and Oriya languages'⁸.

Panos were remunerated mainly in grain and were also allocated patches of cultivable land in both hill slopes and plains areas.

Traditionally, the Goudas grazed the Kandhs' cattle and other domestic animals, and were likewise given paddy and other food crops in remuneration. In some places they were also given patches of land, both plains and swidden hill forest land.

In recent years the age-old relationship between Kandhs and Panos has been fraying, and there has been increasing conflict between them, mainly related to

⁶ As per the 1997 BPL Survey, Panchayat Raj Department, Government of Orissa.

⁷ Bohidar, S. N. and C.G. Mishra (1993). First Working Plan for the Reserved Forests of Phulbani Forest Division, Government of Orissa: Cuttack.

⁸ Padel, Felix 1995 The Sacrifice of Human Being, p.133.

the settlement of Kandh customary land by Panos individuals and the alleged Panos' exploitation of Kandhs through money lending and trading.

Since Independence many non-tribal households have migrated into Kandhamal District from the adjoining plains areas, particularly from the current Nayagarh, Gajapati and Ganjam districts. Now they own most of the shops and businesses in the interior area of Kandhamal District and form a substantial part of the population.

The present Kandhamal district is constituted of segments of three erstwhile principalities of Boudh, Ghumsar and Khemundi, illustrated in Figure 3 below.

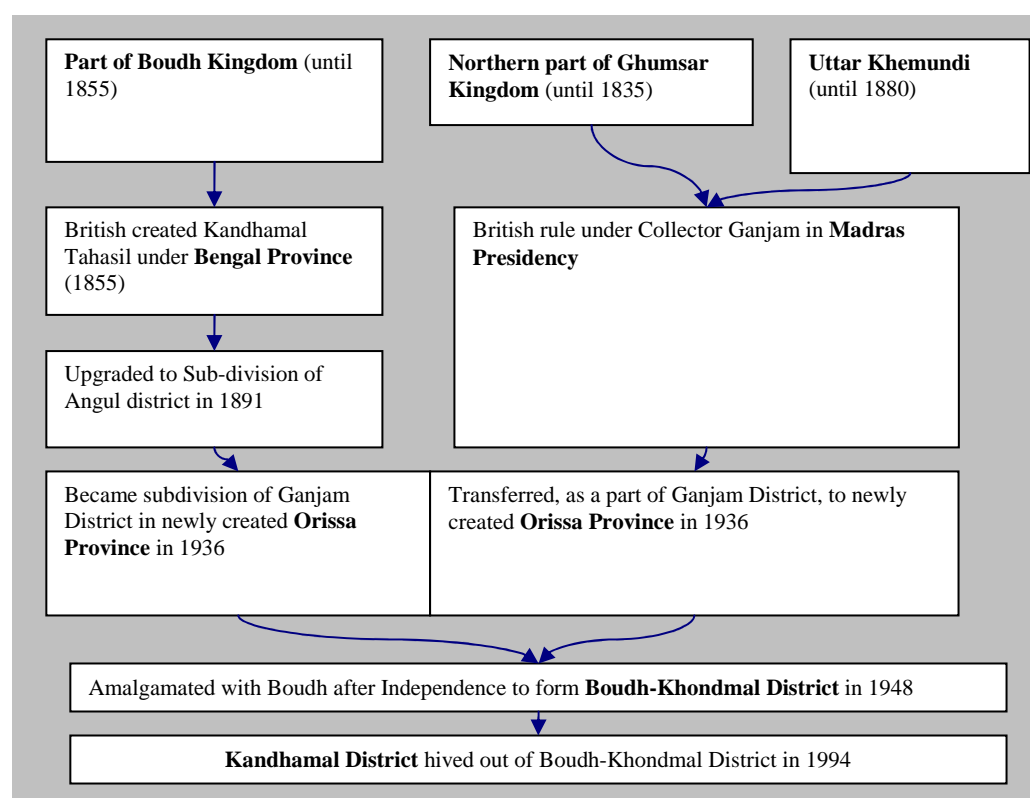


Figure 3: Historical Evolution of Kandhamal District

The British occupied Ghumusar on November 3, 1835, taking it from the Ghumsur King. The British then gradually annexed the Balliguda (Uttar Khemundi) region in phases from 1830 to 1880 by successively subjugating local hill chiefs. After the British conquest of Uttar Ghumasar (G.Udayagiri area) and Uttar Khemundi (Balliguda area), they were both placed under the administration of the Collector of Ganjam district which was under the Madras Presidency. This area which was administered as a Tribal Agency Area⁹ remained under Ganjam district until India attained independence.

⁹ Gazetteer, Kandhamal District (GoO 1983)

The present Kandhamal sub-division was nominally part of the Boudh princely state until 1855. However, the Kandh-dominated hilly area was effectively autonomous as the Boudh King had very little control over the area. But in 1835 this changes as the British launched a vigorous campaign to annex these tracts, ostensibly to suppress the practice of human sacrifice (*Meriah*) which the Boudh King had failed to do. The British encountered stiff resistance from the tribals and it took twenty years before, on February 15 1855 they named this newly annexed territory Kandhamal and brought it under direct British rule within Bengal Province.

After Independence, in January 1948, Kandhamal was amalgamated with the merged princely state of Boudh to form the district of Phulbani. The present Kandhamal District came into being on 1st January 1994 by dividing the parent Phulbani district into Kandhamal and Boudh districts.

3.1. Land Ownership and Use in Kandhamal

Of the district's total area of 8,021sq.km, 71 % (or 5,710sq.km) is classified as legal forests, with 29 % non-forest land (GoO, 2001). Only 12 % of the district's area is private land and 17 % is government owned non-forest land.

Of the forest cover in the district, approximately 3,063 sq. km is classified as 'dense forest'; 2,327sq.km is 'open forest' and another 376 sq. km. is classified as 'scrub' (Forest Survey of India, 2001).

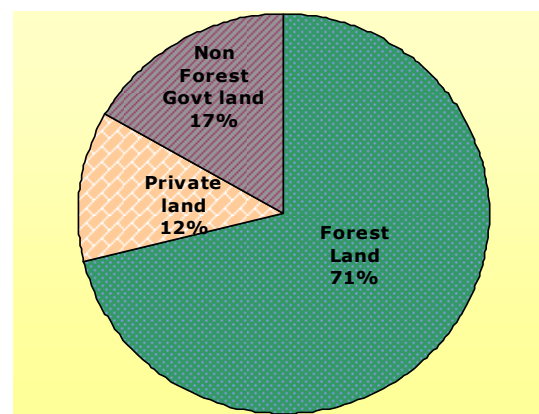


Figure 4: Land Holding Pattern of Kandhamal District¹.

Table 3: Land Use Pattern of Kandhamal District Villages
(excluding forests outside village boundaries)

Types of Land Use	Area (ha)
Forest Area (inside village boundaries)	158,779
Barren and uncultivable land	116,181
Net area sown	75,319
Current fallows	28,009
Other fallows	18,535
Land put to non-agricultural uses	15,261
Culturable waste	13,442
Permanent pasture and other grazing lands	10,869
Misc. tree crops and groves not included in net area sown	1,153
Total	437,548

The aggregate landholding data¹⁰ is given in Table 4 below. The landholding per land-owning household is only 1.27 ha (or approximately 3.18 acres). Approximately 52,000 households can be considered landless¹¹ forming a substantial 38% of the total number of households in the district. Around three-quarters of the rural households are either landless or are marginal farmers, a paradox in a district where only 16% of the land area is settled as private land with cultivators. These three-quarters of rural households legally operate 21% of the private landholdings, which forms only 5% of the total area of the district.

Table 4: Landholding data of Kandhamal District

Data Source:	Total Rural house-holds (no.)	Land-owning house-holds (no.)	Total Land-holdings (ha)	Mean land per land-holding house-holds (ha)	Mean land per rural house-hold (ha)
Agriculture Census 1995-96	NA	83,922	106,771	1.27	NA
Census 2001	136,265	NA	106,389	NA	0.78

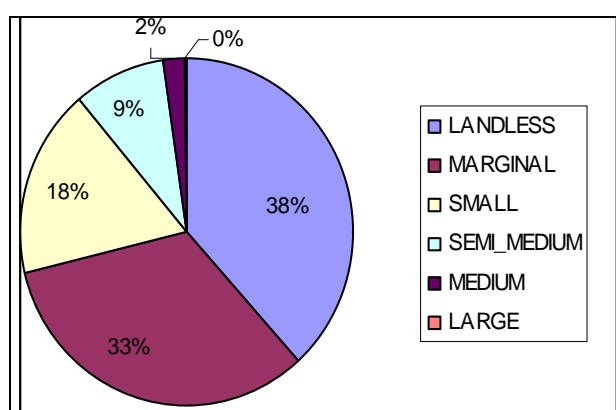


Figure 5: Landholding Categories of Rural Households in Kandhamal¹²

Given that Kandhamal district is a Schedule V district, with special protection for tribal lands according to the Constitution, most of the private landholdings are held by Scheduled Tribes who operate approximately 75% of the cultivated area in the district. However, even amongst the STs, approximately 60% of the rural households are either landless or operate marginal landholdings.

¹⁰ The main sources of data of landownership pattern is the Census 2001, and the Agriculture Census 1995-96, which in turn relies on the Revenue Record of Rights.

¹¹ There is no reliable data on landless households. This number has been arrived at by subtracting the total number of landholdings (Agriculture Census 1995-96) from the total number of rural Households in Census 2001. Therefore this is only a very approximate figure.

¹² Source: Agriculture Census 1995-96, Govt. of Orissa, Orissa

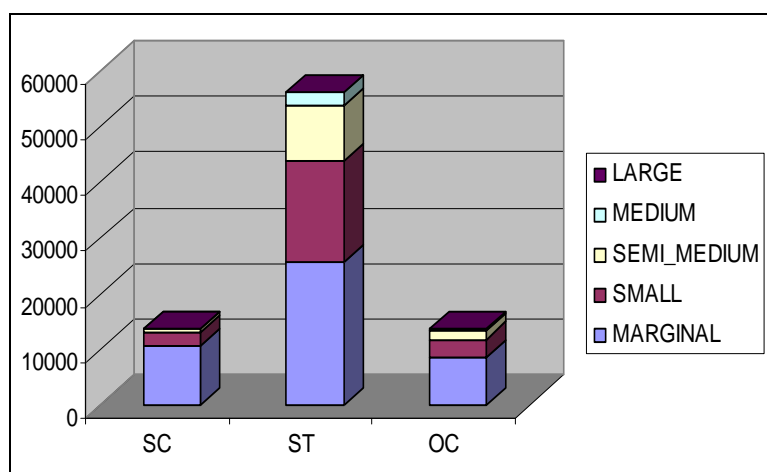


Figure 6: Total Landholding in Kandhamal by Social Group, Split by Holding Size (ha)

Source: Agriculture Census 1995-96, Government of Orissa

Note: SC: Scheduled Caste; ST; Scheduled Tribe; OC: Other Backward Caste

The official landholding pattern in the district is concerning for two reasons. Firstly, in spite of the statutory constitutional protection provided to tribal landownership, almost 60% of the scheduled tribes are either landless or marginal farmers. Secondly, scheduled tribes have rights over only 10% of the total district land area, and the constitutional protection to tribal land extends only to this one tenth of the land area of the district¹³. The Scheduled Tribes have no rights on the 84% of the land in the district under the control of State Government. This becomes significant in view of the fact that customarily the Scheduled Tribes, especially the Kandhs, enjoyed substantial effective autonomy in this region and claimed customary rights over almost all the land in the district.

3.2. History of Land Revenue Administration

Kandhamal's two subdivisions, Kandhamal and Balliguda, have distinct histories of land, revenue and forest administrations. Both these areas were part of the 'Agency for the Suppression of Human Sacrifice and Female Infanticide' (also known as the Meriah Agency) which was set up in 1845. In the same year the British Government made a proclamation that the tribals of the Meriah Agency areas need not pay land revenue in perpetuity¹⁴. In the year 1875, payment of

¹³ The Schedule V of the constitution provides protection to tribal interests in land. However, the way in which the law (Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956) frames this protection, it applies only to the land over which tribals have legal rights, i.e. land for which STs have Record of ownership. Such land forms only 10% of the total land in the district.

¹⁴ In fact the first time Kandhs of Kandhamal district paid land revenue was only after Independence. The proclamation and its continuation shows that the British were sensitive over offending the independent minded Kandhs. Even the Plough tax introduced in 1876 was supposed to be a voluntary contribution with matching grant by the British Government for building roads.

plough tax¹⁵ (calculated on the basis of ploughs owned) was introduced. In Kandhamal Subdivision, the Angul Law Regulation, 1891 was enforced and subsequently the Kandhamal Law Regulation 1936 regulated the administration of the sub-division. Before 1936, Balliguda sub-division was under the charge of a special Assistant Agent under the control of Collector, Ganjam. After formation of the state of Orissa in 1936, this tract was part of Ganjam Agency area until it was included in the district of Boudh-Khondamal in the year 1948.

3.2.1. History of Land Administration and Settlement Operations in Kandhamal Sub-division

The present Kandhamal sub-division was a part of the Princely State of Boudh until 1855, although it was also included as a part of the Meriah agency. In 1855, the British Government took over administration of the tract. The general administration was carried out through offices of the traditional Headmen and the 'Sardar' of Muthas (a group of villages). No land revenue was assessed against the Kandhs¹⁶.

In 1875 the Khonds agreed to pay plough tax (as a voluntary measure) for the first time, to be collected by the village headman. Transfer of land from tribals, especially Kandhs to non-tribals became an issue of concern for the British Administration, especially since there was no land revenue assessment in the area. The government sought to enquire into alienation of land by the Khonds to non-Khonds, register such land and levy land revenue on it. In 1902, an order¹⁷ to check transfer of land to outsiders was passed and subsequently written permission of the Deputy Commissioner was required before any land could be transferred to non tribals. It also allowed for eviction in the case of illegal land transfers. In 1913, a new regulation¹⁸ was framed which further strengthened control over transfer of land from tribals to non-tribals.

The first survey and settlement operation in Khondmals¹⁹ sub-division was started in 1921 and completed in 1925. Its stated objective was to assess lands held by the non-Khonds, to consider their title to such land and to assess them for land revenue. The Survey was initially taken up only in those villages where non-Khond owned land and records of rights were prepared for only the non-Khonds. There were 1,137 villages in the Subdivision of which 645 were surveyed

¹⁵ The records of plough tax payment became the basis for recognition of rights of tribals over their cultivated land in the First Major Survey and Settlement in Kandhamal district (1965-1982).

¹⁶ Ramdhvani, 1947, p.16

¹⁷ *Ibid.*

¹⁸ Angul Laws Regulation, 1913

¹⁹ Previously the present Kandhamal was written as Khondmals

and the remaining 492 villages²⁰ were left un-surveyed. A total of 37,608 acres of permanently cultivated land were surveyed, excluding the land under shifting cultivation. The area of lands held by the non-Khonds in the surveyed villages was approximately 9,527 acres.

During this settlement all lands belonging to the Government were surveyed in blocks. Orchards and fruit trees were not surveyed as they were treated as communal property. The total alienation of lands from Khonds to non-Khonds in the villages surveyed is shown in Table 5 below:

Table 5: Types of Land Alienation in 1921-25; Survey & Settlement in Kandhamal

Type of Alienation	Area in acres
By sale, gift, etc prior to 1914	8,889.13
By sale, gift, etc since 1914	638.59
By mortgage before and after 1914	631.37
Total	10,159.09

No land rents were assessed on Khonds, Panas, Khond Kumbaras, Khond Loharas, Khond Gaurs and Gonds. Land rents were assessed on all other castes.

The First Post-Independence Survey and Settlement Operation

The first post-Independence regular survey and settlement operations (of agriculture land within village boundaries) in Kandhamal sub-division was initiated by the Revenue Department in 1965²¹. Survey and settlement operations were completed in 892 villages of Kandhamal sub-division by 1982. The survey was conducted under the provisions of Orissa Survey and Settlement Act, 1958 and the Kandhamal Law Regulation, 1936. The principles followed for the settlement of rights were as follows²² :

- All land which was being cultivated by tribals before 1969 was to be settled as Raiyati (private) land with the occupants. Payment of plough tax was taken as proof of ownership of land in case of Khonds.
- All land which was settled with non-tribals in 1921-25 settlement was to be settled as Raiyati Land with those non-tribals.
- All 'unobjectionable' government land which could be proved to be under continuous possession of non-tribals for 30 years was to be settled with the occupant.
- All tribal land which had been transferred to non-tribal land in accordance with law was to be settled with the non-tribals.

²⁰ One can infer from this that 492 villages in the Khondmal subdivision were purely inhabited by Kandh tribes.

²¹ Notification No. 21380/ R dt. 31.3.65 and No.77276 / R dt. 3.12.65 of Revenue & Excise Department, GoO

²² Draft Survey and Settlement Report, Kandhamal Subdivision

- All tribal land which was illegally held by non-tribals for more than 12 years under continuous possession was to be settled as raiyati land with the non-tribals through the principle of adverse possession.
- All occupied government land which was otherwise not eligible for settlement with occupant was to be settled as government land, with the fact of encroachment being mentioned in the Record of Rights.

Unlike the 1921-25 Survey and Settlement, the post-Independence Survey and Settlement didn't consider the privileged position of the Kandh tribals, and treated them more or less at par with other castes. These Survey and Settlement provided no or little special privileges to tribals except for providing for regularisation of land held before 1969. It also assessed them for land revenue for the first time in history. The provisions allowing for transfer of tribal land to non-tribals if under occupation for 12 years seems to have been misused on a large scale in order to facilitate the settling of land with non-tribals. This laid the ground for future conflicts as well as appropriation of tribal land by non-tribals.

This survey and settlement also did not recognise tribal rights on shifting cultivation land, which were the most important agricultural lands for the tribals. Almost all shifting cultivation land was settled as Revenue Department land, mainly under the Revenue Forest category. The survey and settlement also left out vast stretches of areas which have already been brought under Reserved Forests and Proposed Reserved Forests by the Forest Department²³, even though there were many problems with their reservation negating tribal land rights. The 1965-82 Survey and Settlement thus had very severe negative consequences on the land access and rights of tribal communities in Kandhamal district.

Ongoing Revisional Survey and Settlement

A Revisional Survey and Settlement Operation²⁴ in respect of 892 villages was started in Kandhamal sub division of Kandhamal district in 1997. This has also excluded the area under Reserved Forests. However, the Government of Orissa suspended the Revisional Survey and Settlement in 2005 without explanation²⁵.

²³ These were areas which were proposed to be settled as reserved forests and a gazette notification for the same was declared under Section 4 of Indian Forest Act, 1927.

²⁴ Notification No. 13590/R-S-55/96 Dated: 17 March 1997 of Revenue & Excise Department, GoO

²⁵ The Kistwar and Khanapuri operations of 427 villages have been completed. However, a notification issued on dated 2-12-05, No. 47729/R-S-176/06 by Government of Orissa, Revenue Department had de-notified to cancel the proceedings concerning Survey, preparation of RoR and Settlement of Rent in Kandhamal Sub division without giving any reason.

3.2.2. History of Land Administration and Settlement Operations in Balliguda Sub-division

In Balliguda sub-division, almost the entire area was left un-surveyed until the first major Survey and Settlement of 1965-82, other than 56 villages of Chakapad Khandam which had been surveyed in 1916 under the Madras Presidency in which land belonging to both Khonds and non-Khonds was assessed.

No land revenue was assessed for the rest of the sub-division and a voluntary plough tax was paid by the Khonds. The first regular survey and settlement operations in Balliguda sub-division were initiated in 1965 alongside the similar exercise in Kandhamal sub-division. Survey and Settlement Operation in 1,611 villages of this sub-division had been completed by 1982.

The same principles that were followed for the Kandhamal Sub-division were used for the Balliguda subdivision. Like Kandhamal sub-division, there seems to have been large-scale settlement of tribal land with non-tribals under this settlement. Reserved forests and proposed reserved forests were left out of the purview of the Survey and Settlement, and the Revisional Settlement taken up since 1997 was suspended in 2005.

3.3. *Creation of the Forest Estate of Kandhamal District*

Kandhamal district has the highest percentage of forest land of any district in Orissa. The total legal forest land is 5,709 sq. km. which forms 71% of the total land area of the district. The legal categories of forest land as per an affidavit submitted to the Supreme Court are as follows:

Table 6: Classification of Kandhamal District Forest Area by Legal Status as on 31.03.2004

Classification of Forest	Area (Sq. km)
Reserved Forest	2,010.06
Demarcated Protected Forest	1,783.30
Undemarcated Forest	0.00
Un Classified Forest	2.00
Other Forest under control of Revenue Dept.	1,914.47
Total	5,709.83

Source: Orissa Forest Status Report 2003-04, Principal Chief Conservator of Forest, Orissa, Aranya Bhawan, Bhubaneswar, p. 8.

The construction of legal forests in Kandhamal district was achieved through two major routes. The first was through the process of declaration of Reserved and Protected Forests under the Madras Forest Act, 1882, Indian Forest Act, 1927 and Orissa Forest Act, 1972. The second route was through the processes of Survey

and Settlement wherein areas inside revenue boundaries of villages were categorized as forests.

The actual physical forest cover often deviates from the land legally classified as forest. In forested landscapes of a district like Kandhamal, even Reserved Forests often has no or little forests, whereas good standing forests can exist on land classified as non-forest land. The actual forest cover in Kandhamal district as assessed by Forest Survey of India is given in the table as below:

Table 7: Forest Type by Actual 'Physical Forest' Cover

Forest Condition	Area (sq.km)
Geographic Area	8,021
<i>Very Dense Forest</i>	175
<i>Moderately Dense Forest</i>	3,157
<i>Open Forest</i>	2,119
Total Forest Cover	5,451

Source: Forest Survey of India, 2003 quoted in www.orissaforest.org

The district has two Forest Divisions, Phulbani and Balliguda, here discussed in turn:

3.3.1. Phulbani Forest Division

Phulbani Forest Division consists of four Territorial Ranges with a total of 59 Reserved Forest blocks. The Forest Division covers the whole revenue subdivision of Phulbani and also covers G Udaygiri Tahasil. The Forest Division in the present form was constituted in 1980 by reorganising parts of erstwhile Phulbani and Balliguda Forest Divisions.

The process of reservation of forests in the area covered by Phulbani Subdivision was started in 1943, when a few forests were notified to be settled as Reserved Forests under Section 4 of the Indian Forest Act, 1927. However, the first Reserved Forests were finally notified only in 1954. Nearly all the Reserved Forests in the Phulbani Division were reserved in the period 1954-1980, with almost half being declared Reserved in the five year period of 1965-1970.

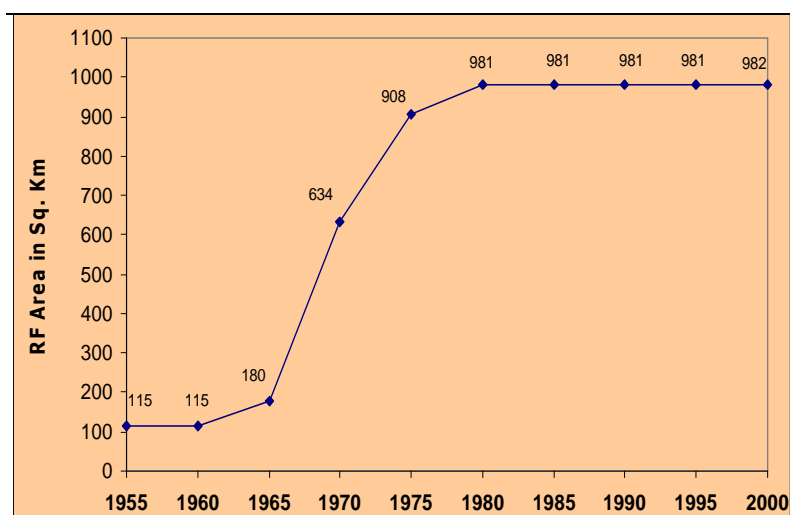


Figure 7: Area of Reserved Forest in Phulbani Forest Division, Reflecting Annual Declarations

Source: Forest Working Plans of Phulbani Forest Division, Govt of Orissa.

The process of these forests' Reservation of seems to have been carried out in a haphazard manner because on closer inspection discrepancies abound. The Working Plan (1990-2000) for instance provides a block-wise comparison between area notified as Reserved Forests and their actual measured area calculated by planimeter. Several large discrepancies emerge, as shown in Table 8 below:

Table 8: Areas of Reserved Forests in Phulbani

Name of Reserve Forest	Area as per RF Notification (ha.)	Area as per Planimeter (ha)	Discrepancy as % of originally notified area
Ranipathar RF	6,481	6,073	-6.30%
Kalbagh RF	7,698	4,931	-35.94%
Gochhapada RF	5,188	5,678	+9.44%
Krandibali East RF	5,872	3,402	-42.06%
Lainpada RF	3,307	2,327	-29.63%
Baraba RF	1,325	1,524	+15.02%

Source: Working Plan, Phulbani Forest Division

These discrepancies are very significant in light of the FCA, 1980 and the Supreme Court's strong stance on forest land, strongly restricting the diversion of any forest land to non-forestry purposes, because they show that the extent of forest land itself is in doubt.

Apart from the Reserved Forests, 35 blocks of forests are also under the category of Proposed Reserved Forests, i.e. where notification under Section 4 of the Orissa Forest Act, 1972, has been carried out but the final notification as a Reserved Forest hasn't yet been carried out.

3.3.2. Balliguda Forest Division

A total of 55 Reserved Forests were notified under Balliguda Forest Division up to February 1999, covering an area of 1,031 sq. km. The process of reservation was carried out initially under the Madras Forest Act 1882 and, subsequently, after it's passing, under the Orissa Forest Act 1972.

Twenty four Reserved Forest blocks consisting of the total area of 392 sq. km. were declared Reserved Forests under the Madras Forest Act over the period from 1955 until 1972. From 1972, when the Orissa Forest Act, 1972 became applicable, a further thirty-one blocks in Balliguda Forest Division, covering 640 sq. km, were also notified as Reserved Forests. Almost 90% of the Reserved Forests in the Balliguda Forest Division were reserved in the period 1965-1985, and more than half the Reserved Forests were declared before 1975.

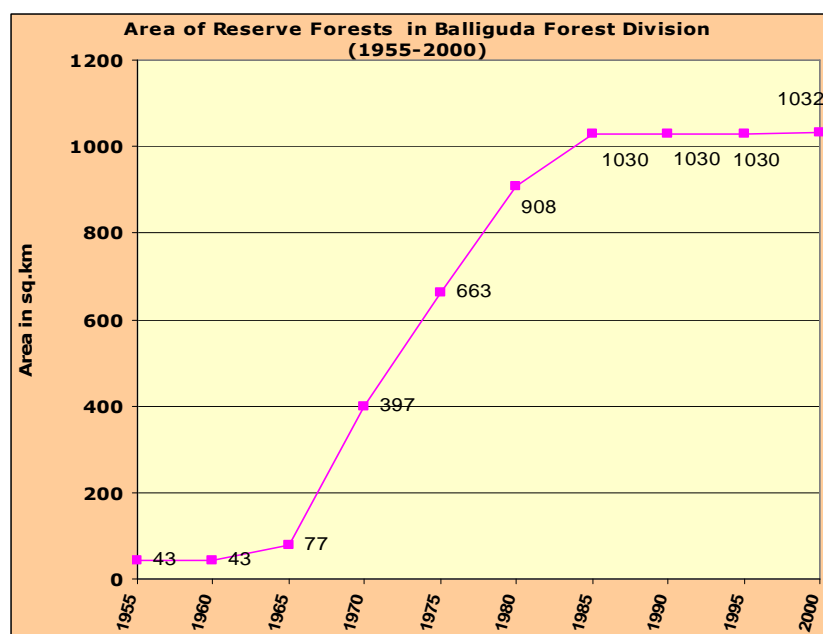


Figure 8: Area of Reserved Forests in Balliguda Forest Division 1955-2000

Source: Forest Working Plans of Balliguda Forest Division, Govt of Orissa.

3.4. Faulty Forest Reservation, Demarcation and Settlement of Rights

Much of the Forest Reservation in Kandhamal district was carried out before the first major Revenue Survey and Settlement of Land Rights was conducted in 1965-82 and the preparation of detailed record of rights. One of the consequences seems to be that in absence of a recognized Record of Rights in unsurveyed areas, the reservation of forests seems to have ignored tribal settlements interspersed within these forests. The problem seems to have been aggravated because even proper physical verification of the areas proposed to be declared as Reserved

Forests wasn't taken up in order to check whether settlements existed within these RFs.

The process of Reservation of Forests as per the IFA, 1927 or OFA, 1972 is illustrated in the Figure 9 below. As per the law, a Forest Settlement Officer, who is generally from the Revenue Administration, is appointed to carry out the process of reservation.

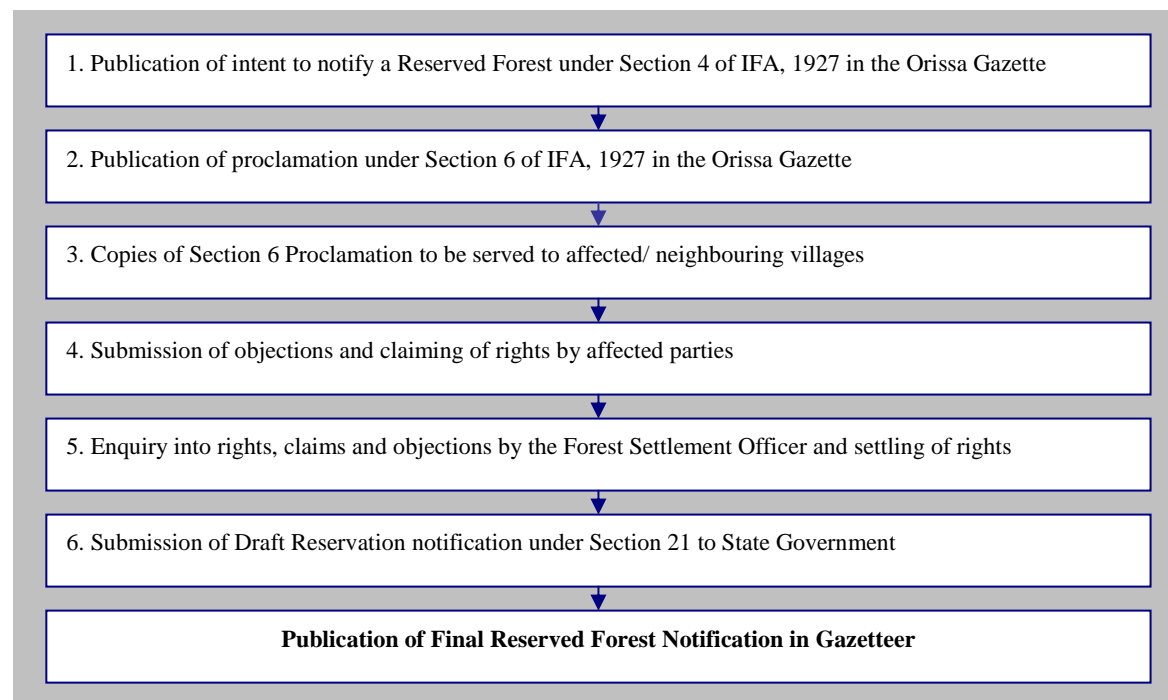


Figure 9: Process of Forest Reservation

The forest laws provide for settlement of existing rights on land and use of forests. The reservation proceedings documents for Kandhamal district show that where officially recorded rights were available, these were given due consideration during the Forest Settlement process. These rights primarily related to rights on land, and so settlements recorded as villages in the Revenue Records were left out of the forest areas. However many of the villagers also carried out shifting cultivation on forested hill slopes, but this was not accepted as a right and therefore areas under shifting cultivation were often included in Reserved Forests wherein cultivation was prohibited.

In Kandhamal, forests were extensive and tribal settlements were often located in remote and inaccessible valleys. It was practically difficult to demarcate such forests and exclude villages located inside them without a great deal of time and effort. In the absence of proper Revenue Survey and Settlements, cadastral maps of the villages were not available until the 1980s, and therefore demarcation of forests before 1980s often included these villages inside their boundaries. The

situation was aggravated by the fact that the Revenue Survey and Settlements from 1965-1982 left out Reserved and the Proposed Reserved Forests. Figure 10 (from GoogleEarth) below illustrates this problem, showing a long established settlement, its paddy land and shifting cultivation fields in the heart of Shrirampur Reserved Forest (Block A), where rights are not permitted.

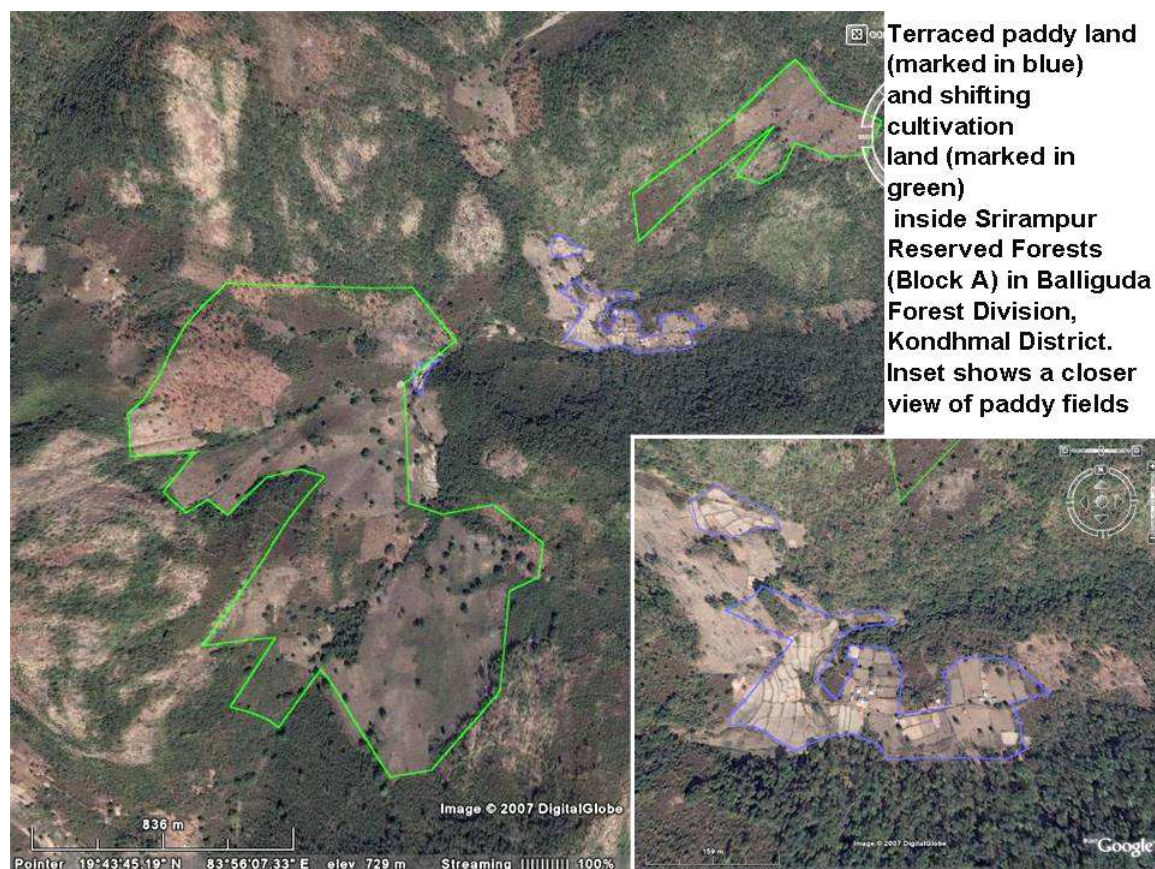


Figure 10: Annotated Satellite Photographs Showing Settlement, Paddy Land and Shifting Cultivation Fields within Shrirampur Reserved Forest

Another illustration that the settlement processes due under the IFA, 1927 were not properly followed is the case of Baghnadi Reserved Forest. This large Reserved Forest in the Phulbani Forest Division was finally notified as Reserved Forest in 1968²⁶ after apparently following all the official procedures of the Indian Forest Act, 1927, which include specific provisions for settlement of rights before declaration of RFs. However, in 1974, while the Camp Office of the Survey and Settlement was going on in this area, the local villagers informed the Survey and Settlement personnel that there were a large number of habitations existing within the RF. On inquiry, it was found that there were 30 settlements inside the Reserved Forests. This was taken up with the Collector and the State Government, and the matter was resolved by taking out (de-reserving) these villages from the Reserved Forests in 1980 just before the passing of the Forest

²⁶ Reserved vide notification no. 28550-FS-312/68-R dated 5th June 1968 with an area of 7224.60 ha.

Conservation Act, 1980. A total of 3,438 ha were de-reserved from Baghnadi RF²⁷, remarkably almost half of the originally notified forest area.

It may reasonably be inferred from these examples that the rights of many villages were similarly neglected at the time of forests reservation. Almost all the major forest areas in Kandhamal district were brought under the category of Reserved Forests or Proposed Reserved Forests during the same period of 1955-1970 and one may reasonably assume that similar laxity of procedures as in Baghnadi were rife during other reservations too. This is borne out by the fact that in the year 2000, a proposal to divert forest land to regularize another 20 forest villages²⁸ (17 in Kandhamal forest division and 3 in Balliguda forest division) over an area of 438 ha was submitted to the Ministry of Environment and Forests, Government of India²⁹. This also seems to be a serious underestimate as, in 1993, an enumeration based only on cases filed for cultivation on forest land calculated that 2,700 ha of forest lands were under cultivation in just Balliguda Forest Division³⁰.

3.5. Cultivation on Other Categories of Forests

Reserved Forests form only about 35% of the total forest land in the district of Kandhamal. Demarcated Protected Forests (i.e. forests whose boundaries have been demarcated by the Forest Department and which are proposed to be reserved) form another 31% of the legal forests. Another 33% of legal forests are categorized as 'Other Forests', almost all located inside the village boundaries. These have been demarcated through the Survey and Settlement Processes carried out by the Revenue Department rather than by the Forest Department and are considered 'Revenue Forests'.

Given the restrictions and strict monitoring by Forest Department on cultivation in Reserved Forests, it is the Demarcated Protected Forests and the 'Other Forests' where most of the cultivation continues to be carried out. Almost all shifting cultivation areas which haven't been declared as Reserved Forests or DPFs are categorized as Other Forests. These lands are more intensively cultivated than the RFs or PFs, but due to the restrictions imposed by FCA, 1980, these forest lands can't be settled with the cultivators.

²⁷ Dereserved vide Government notification SRO no.458/80 dated 15th April, 1980

²⁸ As per instructions issued by MoEF, GoI, "encroachments" on forestlands before 1980 and eligible for settlement to the "encroacher" as per State Government laws, only can be regularized and settled with the "encroachers". However, the Government has to divert equivalent amount of non-forest land for compensatory afforestation. A proposal has to be prepared and submitted to the MoEF, GoI, and even if it clears such a proposal, the proposal also has to be cleared by the Supreme Court of India.

²⁹ Letter of the Forest & Environment Department, GOO No. 10F(CONS)92.2000/ 15907/F&E, Bhubaneswar dtd 2nd October, 2000.

³⁰ Letter of the DFO, Balliguda Forest Division no. 6580 dtd. 4th November, 1993 addressed to the Collector, Kandhamal District.

A plot to plot analysis of cultivated land in Gourigaon village in Kotgarh Block revealed that out of a total of 198 acres land under cultivation, only 43 acres was legally owned by the villagers and 145 acres of cultivation was on Government land. Of this, 132 acres of cultivation was being done on Revenue Forest land within the village boundaries (Vasundhara 2006).

There are a large number of similar villages where most of the land inside the village boundary is categorized as forest land, leaving little land for agriculture. The 2001 Census Data shows that almost 50% of the land inside revenue village boundaries in Kandhamal district has been categorized as Revenue Forests. Analysis also shows that there are 1,039 inhabited villages (out of 2,379 total inhabited villages) in Kandhamal district where the average forest land (within village boundaries) is more than 5 acres per household, whereas the average amount of private land is less than 2.5 acres per household. Almost three-quarters of all land in these villages are classified as forests. About 34,000 households reside in these villages, and Scheduled Tribes form 72% of the population of these villages.

The census data also shows that there are 52 villages inhabited by 1,803 households (64% tribals), where per household average landownership is less than 0.5 acres but the availability of forest land is more than 2.5 acres. Forest Land made up 82% of the area of these villages (Figure 11).

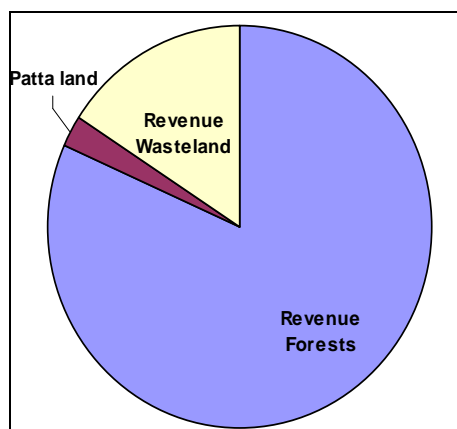


Figure 11: Aggregate Legal Land classification in 52 Villages having Less than 0.5 Acres private Land per Household and more than 2.5 Acres Forest Land/Household

It is apparent that large areas of land categorized as Revenue Forests inside village boundaries are under cultivation as in the example of Gourigaon. A large percentage of such land is also under shifting cultivation, especially in the Belghar, Kotgarh, Tumudibandh, Daringabadi and Bamunigaon Police stations' jurisdictions of Balliguda subdivision. No proper assessment of the extent of such

cultivation on land categorized as forests has ever been made. One attempt to formulate a proposal to regularize cultivation on Revenue Forest lands was made in 1994, wherein only such Revenue Forest lands where encroachment cases had been filed before 1980 were submitted. This particular proposal, provided data for 785 ha, was to be submitted to the Ministry of Environment and Forests, Government of India. No follow-up has been done for this proposal and there are no records of what has happened to it.

3.6. Rights and Concession on Reserved Forests in Kandhamal Divisions

During forest reservation in Kandhamal district, comparatively more rights and concessions had been provided to Kandhs and other “genuine inhabitant”³¹ of the localities whose names have been enrolled in enumeration registers. The rights and concessions are subject to the condition that such rights are exercisable only up to the limit of which the reserve forests can bear under proper management.

The admitted concessions provide scope for removal of timber for house building and making ploughs, collection of MFPs, dry fire wood, bamboos free of any charge for their own use with some limitations, such as providing 15 poles inclusive of 3 Cft of timber or 10 Cft of timber per household, 4 head-loads of bamboo per household and so on.³² However currently these rights and concessions have been suspended by the FD, although the justification for suspension has not been given.

3.7. Shifting Cultivation in Kandhamal District

Shifting cultivation (or *podu* in the local vernacular) was once a common livelihood practice, providing a major source of subsistence across the whole of the current Kandhamal district. However, during the Forest Reservations and Survey and Settlements, the practice of shifting cultivation was not taken into account and the shifting cultivation lands on the hill slopes were either classified as Reserved or Proposed Reserved Forests or as government revenue lands. Vast areas of land customarily cultivated by the Kandhs and other tribals were converted into state-owned lands, and shifting cultivation on these lands was criminalized.

Foresters have perceived shifting cultivation as a destructive practice in relation to timber production, and sought to both criminalize it and also persuade the shifting cultivators to move to other livelihoods. Colonies for resettling shifting

³¹ For Kandhamal District, “genuine inhabitants” excludes Mahajans, shopkeepers, contractors, clerks and non-agricultural tenants *vide* the standing order no 338 of 10.10.40 of the Agent of Kandhamal, Source: Phulbani Division Forest Working Plan

³² State of Forest Report Orissa, 2003-04, p. 20-21.

cultivators were established in Balliguda sub-division during the Fifties, although almost all these colonies eventually failed.

Shifting cultivation has reduced in extent, although it is still being practiced in remoter parts of Kandhamal district, especially in Balliguda subdivision in Belghar, Kotgarh, Bamunigaon and Daringabadi areas. In Phulbani and G Udaygiri areas, shifting cultivation has been mostly stopped.

The reasons for the reduction in podu are complex. Firstly there has been relentless punitive coercion from the Forest Department through on-the-spot fines and court cases against shifting cultivators. Secondly new alternatives have emerged, for instance the intensive cultivation of turmeric as a cash crop, the availability of wage employment in government programs. Also there has been an increasing trend of youth out-migration to other more economically dynamic states for better-paid labouring jobs. Lastly, from the 1970s and 1980s, a forest protection movement also swept through Phulbani and G Udaygiri areas, and large patches of erstwhile shifting cultivation areas were brought under protection, leading to profuse regeneration of forests.

The dynamics and implications of stopping of shifting cultivation (e.g. Phulbani and G Udaygiri areas) in some areas and its continuation in other zones (e.g. Daringabadi, Balliguda, and Kotgarh areas) are not well understood. The changes in livelihood patterns that have occurred as a result of stopping of shifting cultivation and its implications on food and nutrition security, gender and equity and shifts in social relationships is also completely unexplored. What seems reasonably clear is that in context of Reserved Forests and Proposed Reserved Forests, there have been continuous struggles and conflicts between tribal communities and Forest Department over shifting cultivation, with FD clearly having the upper hand. This is illustrated by the data on cases booked by the Forest Department in G. Udaygiri Range since 2001, as shown in Table 9.

The majority of court prosecuted cases relate to shifting cultivation (47 of 87) despite the fact that shifting cultivation has almost disappeared in the G Udaygiri range by 2000.

The reduction in shifting cultivation has been strongly aided by the opprobrium heaped on podu. There has been a clear consensus amongst all powerful groups, including bureaucracy, non-tribal politicians, environmentalists and general opinion makers about the “evil” nature of podu. However this consensus has little scientific basis. When people who criticize shifting cultivation are faced with scientific evidence that shifting cultivation practices can be a sustainable and highly productive adaptation to ecological conditions where fallows tenure is secure (from the North East of India for instance) the usual reaction is incredulity.

Within tribal communities too, in the newer generations, shifting cultivation is perceived as being primitive and backward. It is only the older generations which defend shifting cultivation as a cultural and economic practice.

Table 9: Forest Offence Cases under G. Udayagiri Forest Range 2001 – 2006

Year	No. of Cases Booked			No. of Cases Disposed				Pending for Disposal
	Offender Detected	Offender Undetected	Total	Compounded (i.e. on the spot fines) ³³	Referred to Court for Prosecution ³⁴	Section 56	Dropped	
2001-02	677	72	749	660	16	1	72	0
2002-03 ³⁵	590	27	617	553	36	1	27	0
2003-04	636	25	661	611	22	3	25	0
2004-05	221	6	227	215	4	2	6	0
2005-06 (to 31 Jan)	240	6	246	231	9	0	6	4
Total	2,364	136	2,500	2,270	87^s	7	136	4

Source: Forest Offence Register of G. Udayagiri Range, Kandhamal District

The treatment meted out to shifting cultivation can be seen as symptomatic of the colonization of tribal spaces by non-tribal, and processes of destruction of identity and culture of these unique societies. These processes demand deeper study and investigation. More than the criminalization of shifting cultivation, it is the non-recognition of any forms of rights over these lands which have been the real problem for the tribal communities. Virtually all shifting cultivation land has been converted to either forest land or revenue lands, where tribal communities have effectively no or little rights.

³³ *Compounded*: Cases finalized or decided with charging fine. This is under the discretionary power of the Forest Department. However, the fine limit under this category would be up to a maximum of Rs. 500/-. The offence cases in which the amounts exceed more than 500/- are referred to the court for prosecution.

³⁴ § Out of 87 court prosecuted cases 47 are for shifting cultivation, 42 for felling timber and 7 cases for illegal trading in vehicles.

³⁵ Upto 2003 G. Udayagiri and Tikabali were part of same forest range and after that Tikabali was separated as a new Forest Range.

4. Pakari Village Case Study

This case study of a remote tribal village in a forested area of Kandhamal District illustrates the fundamental problems with settlement processes which have undermined villagers' livelihood security.

Pakari is a Revenue Village in Krandibali Gram Panchayat, in the Gochhapada Revenue Circle under Phulbani Tahasil. It is surrounded by forests of the Baghnadi Reserve Forests and Balandapada Proposed Reserved Forests. The total population is 566, comprising 136 households³⁶. Scheduled Tribes form a majority in the village, which is mainly made up of Kandhs followed by Panos, Gouda, Teli and Rana. The village has four hamlets, of which three are dominated by scheduled tribes (STs) and the rest by dalits (SCs) and 'other backward castes' (OBCs).

Table 10: Demographic Composition of Pakari village

Hamlet	Total Households	ST	SC	OBC
Jidingipada	43	36	5	2
Brudipada	30	18	3	9
Sakadipada	24	16	7	1
Sarupada	39	5	11	23
Pakar Total	136	75	26	35

Pakari is a comparatively developed village in its area. Over the last 10 years the government and NGOs have carried out many developmental works including road construction, forest clearing, and Kendu leaf collection development. Through these initiatives employment opportunities have been created which have complemented marginal cultivation and non-timber forest product collection. During these periods the average availability of wage per month is estimated at 20 to 25 days per month, with the wage per person around Rs. 40/-.

4.1. Legal Land Categorisation and Land use in Pakari Village

The total area of the village within the Revenue Boundary is 458 ha of which 342 ha (75%) is categorised as forest land³⁷. The status of legal land classification in the village is as follows:

³⁶ Census 2001

³⁷ District Census Handbook, 2001

Table 11: Status of legal land classification in Pakhari village

Types of Land	Forest land Area (ha)	Non-forest land Area (ha)	Total (ha)
Patta Land (private)	-	87.00	87.00
Government Land	342.00	29.39	371.39
<i>Abad Ajogya Anabadi (AAA)</i>	334.00	19.00	353.00
<i>Abad Jogya Anabadi (AJA)</i>	0	0.90	0.90
<i>Sarbasadharan</i>	0	1.99	1.99
<i>Rakhita</i>	8.00	7.50	15.50
Total Land	342.00	116.39	458.39

Source: Record of Rights from <http://bhulekh.ori.nic.in>, Dept of Revenue and Disaster Management, Govt. of Orissa.

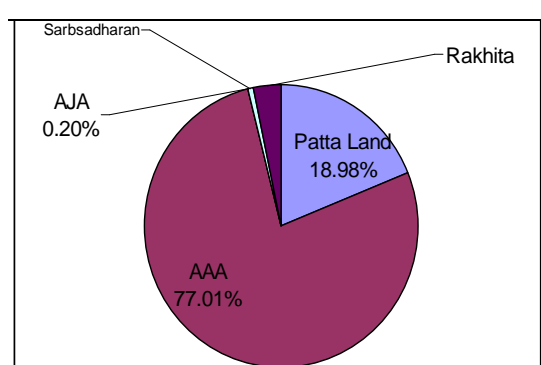


Figure 12: Legal Categories of Land in Pakari

Source: <http://bhulekh.ori.nic.in>, Dept of Revenue and Disaster Management, Govt. of Orissa.

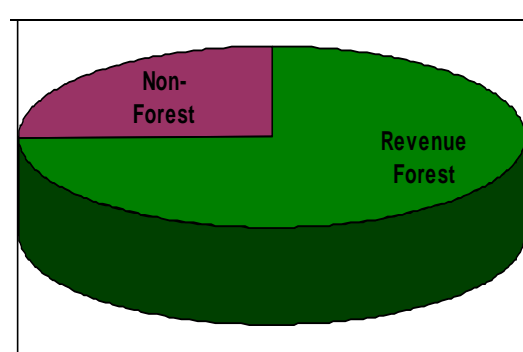


Figure 13: Forest and Non Forest Land in Pakari Village

Source: <http://bhulekh.ori.nic.in>, Dept of Revenue and Disaster Management, Govt. of Orissa.

The major agricultural land uses in the village are terraced paddy lands, used for single paddy crops, and less fertile uplands used mainly for minor millets, pulses and upland paddy.

There has been a major and complex shift in the land use pattern in Pakari during the last two decades. Earlier shifting cultivation was widely practiced on all the hill slopes around the village for minor millets and pulses. This has reduced, although there are still; upland clearings within the forests where these crops are still being cultivated.

The major factor in reducing shifting cultivation has been the Forest Department. Most of these hills were included in the Baghnadi Reserved Forest and Balandapada Proposed Reserved Forests, and thereafter the Forest Department began actively discouraged shifting cultivation through filing cases and imposing fines. Two other factors have also been present.

Wage employment became increasingly available through various government programs, as mentioned above. The FD also initiated some development work under National Food for Work Programme (NFFWP) and other schemes and has recently formed a Vana Samrakshana Samiti (VSS) for protection of forests (although the VSS was non-functional at the time of the study).

Lastly, local people also said that shifting cultivation was a highly labour intensive practice with relatively low returns, and would move out of it if more remunerative opportunities emerged:

“In shifting cultivation we had to work for 8 months for 1,000 rupees but in wage we are getting more than that in one month”.

However local people continue to depend on forests, mainly for fuel wood and NTFPs (including Siali leaf, Kendu and Sal leaf, Mahua, Sal seed), although NTFP availability been gradually declining.

4.2. Survey and Settlement Problems in Pakari Village

The village was apparently covered during the 1921-26 Survey and Settlement. The villagers have been paying plough tax since the beginning of the 20th Century. Bisweswar Kanhar of Pakari recalled that there was a camp in Balandapada, seven kilometres North of Pakari, to collect plough tax.

During the First Major Survey and Settlement for Kandhamal, Pakari village was surveyed in 1970 and Pattas (official records of private land tenure) were issued in 1975. The current Record of Rights derives from this Survey and Settlement.

Under the Revisional Survey and Settlement initiated in Kandhamal in 1997, the settlement was carried out in Pakari in 2002 and Khanapuri³⁸ has been completed, but no Pattas have yet been given. This Revisional Survey and Settlement process was suspended *vide* Revenue Department notification no. 47729/R-S-176/06 dated 2-12-05.

The total extent of cultivation on government land within Pakari village boundaries (as shown in the Encroachment Register³⁹ prepared in 2002) is 18.62 hectares. Of this 6.76 hectares are shown in the names of 89 households, the remaining 11.85 hectares is not recorded against any individual's name. Of 6.76

³⁸ Information collected from record room files of Survey and Settlement Office, Phulbani.

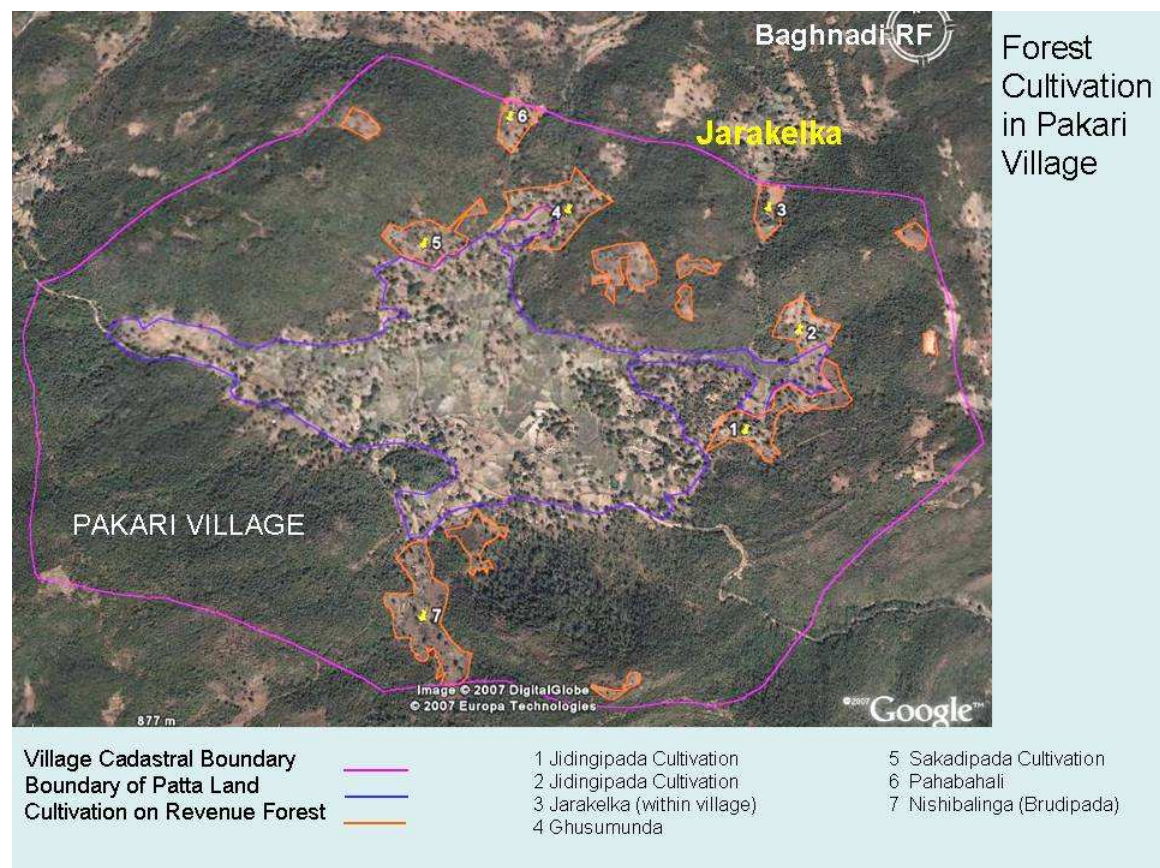
³⁹ The Revenue Inspector (local lowest level Revenue Department functionary responsible for land record keeping and land administration) for the area maintains an Encroachment Register under the Orissa Prevention of Land Encroachment Act, 1972, wherein the details of “illegal cultivation” on Government land is to be maintained. This acts as the official record of “encroachments” on Government Land. Cases have to be filed against the encroacher. The outcome of the case is supposed to be either the eviction of the encroacher or settlement of land with the cultivator if the land category is “unobjectionable” and the cultivator comes under the category of “legally landless”. In reality, it is almost impossible for the revenue inspector to evict the cultivator, and eviction takes place only on paper.

hectares, 1.42 hectares is under the 'non-objectionable' category and 5.34 hectares is the 'objectionable' category.

Field verification, as well as (Google Earth) satellite mapping, shows that the official figures are underestimates. There are seven major areas within the village boundary where cultivation on Government land is taking place, indicated on Map 4 below. Almost all these 'encroachments' are on *Abad Ajogya Anabadi* land which has been categorized as Revenue Forests.

Pahabali is located in the extreme north of the village and is a sub-hamlet of Sakadipada having three households of Padulu Bindhani, Makaranda Bindhani and Kashinath Bindhani. These three household belong to the Lohar (blacksmith) community considered as OBC. They have been living and cultivating these lands for generations. However, the land is recorded as Sal Jungle. Only one person of Pahabali area (Padulu) is officially shown with encroachment of 0.94 hectares of land (Plot no 462). Ghusumunda is a sub-hamlet of Jidingipada Hamlet. Officially, 27 families are cultivating plots no. 76, 77 and 462 of (categorized as Sal Jungle) covering an area of 2.32 hectares. Three families have their houses in this area on government land and are cultivating in this area, although two of these families are not included in the encroachment register.

Comparison between the official encroachment records and the ground situation shows that official records wildly misrepresent the ground situation. Part of the reason may lie in the practical challenges facing the Revenue Inspector (RI) who has jurisdiction over both Pakari and at least 153 other villages in an extremely remote area. Under such conditions it is almost impossible for the RI to effectively carry out any land governance function including measuring cultivation on Government land and filing encroachment cases after proper field verification.



Map 4: Cultivation in Baghnadi Reserved Forest in Pakari

It is also interesting to note that almost all the land which is eligible for settlement under revenue laws has been recorded as being 'encroached' by households belonging to Other Castes, whereas almost all the land 'encroached' by Sheduled Tribes is of Revenue Forest category which can't be settled so easily.

Box 1 Ancestral lands and the Reserved Forest boundary: The case of Jarakelka village

Fifteen families of Jidingipada hamlet had been residing at a place called Jarakelka before the 1970s, cultivating about 30-35 acres (12-15 ha) of ancestral lands, in what is now the Baghnadi Reserve Forest. However things changed after a shepherd, Bagi Bagh, was killed by a tiger and soon after a pregnant woman also died during delivery. These events were seen as being ominous, being due to the wrath of the Earth Goddess *Dharni Penu* and Jarakelka was deemed to be unsuitable for the living. Gradually, as per the Khond custom, all the families shifted their homesteads to Jhidingpada. However, they retained possession of the agriculture land at Jarakelka and continued to cultivate it. Evidence of the habitation at Jarakelka is still visible: the remains of old houses can still be seen, as in Plate 1 below, now in a dilapidated condition.

In 1968, the Baghnadi Reserved Forest was declared, with Jarakelka included within it. Thus, like many other villages these agricultural lands at Jarakelka also became part of Baghnadi Reserved Forests. The people of Jidingipada recall that during the

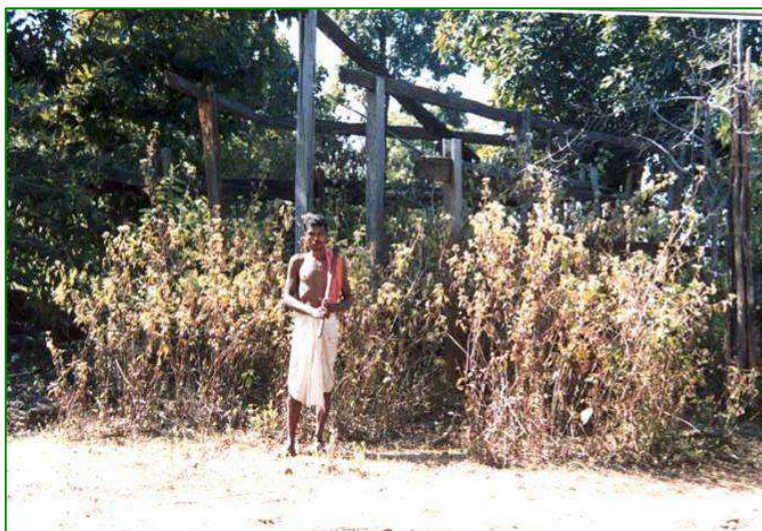


Plate 1: Mr. Dange Kanhar of Pakari Village standing in front of the remains of his house in Jarakelka

Survey and Settlement in the 1970s, the elders of

Jidingipada requested the Survey and Settlement Team to include Jarakelka area within the village boundary. The villagers also say that Gudada Kanhar used to pay the plough tax for Jarakelka. But according to the villagers none of this was taken into consideration when the boundary of the village was drawn during the Survey and Settlement, and the Jarakelka area was allocated within the Baghnadi Reserve Forest boundary.

Later, in 1980, thirty villages that had been wrongly included within Baghnadi RF were finally de-reserved and converted into Revenue Villages. However Jarakelka was not included. Thus the persons cultivating their ancestral lands in Jarakelka are treated as forest encroachers in the Baghnadi RF. A case was registered against the persons cultivating land in Jarakelka in 1986 and proceeding continued in Court, Phulbani and was disposed in 1990. The persons involved in the case recalled that the judge had directed them not to go for further cultivation over these lands in Jarakelka within Baghnadi RF. However, these tribals continue to cultivate these lands lacking other cultivable land.

In 1986, the Sarpanch⁴⁰ of Krandibali Panchayat submitted an application to the Collector wherein he provided a list of households who were cultivating land categorised as forests in Baghnadi RF and Balandapada PRF and requested the Collector to settle these lands in their names. This list included the households cultivating Jarakelka. The 15 families of who cultivate land in Jarakelka have also again submitted applications to the Tahasildar⁴¹ for regularisation of these lands in 2000. No response has been received from the Tahasildar on this matter⁴².

⁴⁰ Sarpanch is the elected head of a Panchayat, the local unit of self government.

⁴¹ Tahasildar is the Revenue Department functionary for the area called a Tahasil. A district is subdivided into a number of Tahasil for land administration.

⁴² Which is not surprising, given that these land are in Reserved Forests, and would require formulation of a proposal by the State Government for diversion of these forest land, and its clearance from both MoEF, GoI

4.3. Summary of Findings from the Pakari Case Study

Three-quarters of Pakari's land area within the village boundaries is categorized as forest land and only one-fifth is settled with private landowners. Large areas are under Revenue Forest including some patches which have been cultivated by the villagers for a long time, but these lands weren't settled with them during Reservation of forests and Survey and Settlement. Much of the land cultivated by the villagers isn't even reflected in the official encroachment records.

The case of the fifteen families cultivating nearly thirty-five acres of land at Jarakelka within Baghnadi RF illustrates that even when the original mistake of including villages inside Baghnadi RF was rectified in 1980 (thirty villages were recognised at that time), some villages like Jarakelka have not been recognised and continues to be classified as Reserved Forest. As per law, they should have been settled with the cultivators.

There has been a major and complex shift in the land use pattern in last two decades, partly caused by the tenure and rights deprivations. Shifting cultivation, which had been widespread, has been reduced mainly due to punitive measures by the Forest Department staff: filing of court cases and fines under the forest laws, although also due to the increased availability of wage and livelihood opportunities.

Overall Pakari illustrates the problems of:

- Survey and Settlement (the non-recognition of permanent cultivation and shifting cultivation),
- poor land administration (reflected in major variance in official data on encroachment and actual ground situation),
- Problems with forest reservation process (Jarakelka in Baghnadi RF and non-recognition of rights on shifting cultivation lands).

All these together have ensured denial of customary rights to tribal people: almost 80% of the land of village is now classified as Government land, on which the tribals and the village community has no effective legal rights.

and the Supreme Court. Then as per the current procedures, the same amount of non-forest land would have to divert to forest category and compensatory afforestation carried out by the State Government at its own costs. For the Tahasildar to set this process in motion, even if he were interested and found the case of the Jarakelka villagers to be genuine would be extremely foolhardy.

5. Mandaguda Hamlet Case Study

Mandaguda hamlet illustrates tribal land use under conflict with faulty Revenue and Forest settlements, which have ignored the legitimate tribal practices.

Mandaguda is a hamlet of the Ranjrabadi revenue village, located in Tikabali Block of Kandhamal district. This village also comes within Phulbani Forest Division and is located in the G.Udaygiri Forest Range. The Tudubali Reserved Forest adjoins the western side of the hamlet. This Reserve Forest comes within the G Udayagiri Range. Other settlements surround the hamlet.

The village name is the combination of Manda (the name of a person who founded the village) and Guda, which in Kui refers to hamlet (*sahi*). According to the elders, Danda and Manda were two brothers who first came from the east a long time ago, and since Manda settled here, it became known as Mandaguda.

Mandaguda has 68 households with of 52 Kandhs (STs) and 16 Panos (SCs) households. The village has 12 landless households comprising of 8 tribal and 4 dalit households. There has been a major change in livelihood patterns in the last two decades as indicated in Table 12 below. Settled agriculture, mainly paddy and turmeric cultivation, has become the mainstay, with shifting cultivation dramatically reducing and out-migration increasing.

Table 12: Milestones and Livelihood Trends during the Last 20 Years

Issue	Livelihoods 15 - 20 years ago	Livelihoods now
Shifting cultivation & forest use	Relied more on swidden, paddy cultivation and NTFP collection. Extensive Swidden cultivation.	NTFP is a supplementary source of income. Swidden almost stopped.
Paddy cultivation	Population was lower and productivity better, so land used for paddy was less.	More land cultivated for paddy. Population increase. Lower production per unit area.
Other Cropping	Red gram and Jhudanga were the major crops cultivated on hill slopes. Turmeric cultivation very low.	Virtually no cultivation of red gram except by a few. Extensive cultivation of turmeric, mostly on 'encroached' lands.
Wage employment	Wage employment was very low.	Good wage employment available. An average of at least 20 days per month. Rs. 40/ persons days are paid irrespective of gender.
Out-migration	No out-migration.	Almost all the male youths of the village migrate to Kerala to work. This pays around 3,000 rupees per month. Each household has at least one person who has visited Kerala.

Turmeric cultivation is one of the major sources of income of the villagers, with even the poorest households earning at least 4,000-5,000 rupees per year this way, and households having possession of more land suitable for turmeric earn around Rs. 20,000/ annum. Turmeric is cultivated mostly in encroached land in Khesra / Village forests, Anabadi lands and even within the boundary of the Reserved Forest. New Sal tree coppice shoots are cut and used to cover the turmeric field to create the suitable growing conditions. This practice has put serious pressure on regenerating Sal trees in recent years.

NTFP collection and sale is another important economic activity in the hamlet. The main NTFPs include mahua, sal seeds and sal leaves and Siali leaves.

Wage labour has also become an important source of livelihood, as youths from the village are migrating to Kerala for work, where they can earn almost Rs. 3,000/month making cement poles for electricity supply, for instance.

Almost 90% of the patta lands are used for paddy cultivation, the rest, which are uplands, are used for turmeric cultivation or for red gram (*Cajanus cajan*). The people are also cultivating red gram and turmeric over a considerable area of government revenue land and revenue forest land. The villagers are also cultivating turmeric in areas within the Reserved Forest, although shifting cultivation has almost stopped in the village.

5.1. Survey, Settlement and Legal Categorisation of Land

According to the residents of Mandaguda the last survey and settlement process here (and covering the whole of Ranjrabadi village) was carried out between 1970 and 1975, and the current legal ownership of land within the Village derives from this settlement. The legal categorisation of land as per the Record of Rights of Ranjrabadi Village is as follows:

Table 13: Status of Legal Land Categorisation

Legal Categorisation of land	Ranjrabadi		Total
	Forest land (ha)	Non-forest land (ha)	
Private/ Patta Land	-	110.00	110.00
Government Land	185.45	52.13	237.58
<i>Abad Ajogya Anabadi*</i>	42.23	0.47	42.70
<i>Abad Jogya Anabadi*</i>	125.78	16.03	141.81
<i>Sarbasadharan*</i>	0.00	5.21	5.21
<i>Rakhita*</i>	17.44	30.42	47.86
Total Land	185.45	162.13	347.58

*See Glossary for meanings

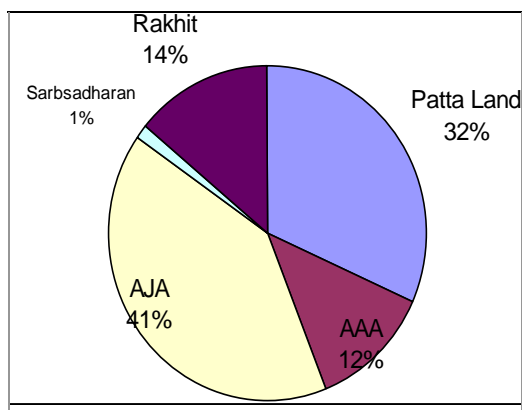


Figure 14: Categories of Revenue Land in Ranjrabadi Village

Source: <http://bhulekh.ori.nic.in>, Dept of Revenue and Disaster Management, Govt. of Orissa.

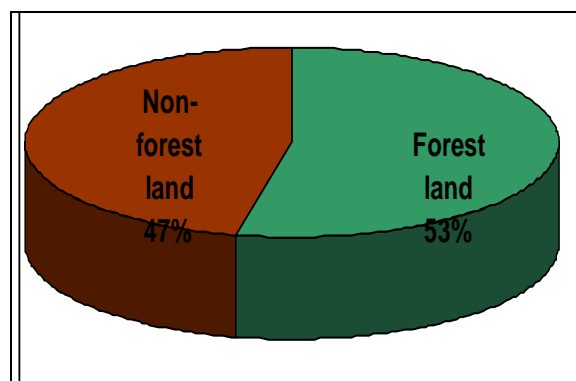


Figure 15: Forest and Non Forest Land in Ranjrabadi Village (Mandaguda)

Source: <http://bhulekh.ori.nic.in>, Dept of Revenue and Disaster Management, Govt. of Orissa.

5.2. Forests and Cultivation on Forest Land

Tudubali Reserved Forest was declared on 01/10/1955⁴³ for an area of 1,668.15 hectares. According to the villagers, the Reserved Forest (RF) was originally demarcated from the upper portion of the hills of Budimaha Saru, Kudimaha Saru and Dersaru hill. About twenty years ago the RF boundary was further extended towards the bottom of the hills, absorbing, about 90% of the total Revenue Forest within the village boundaries. However, the FD record says that there has been no extension of the boundary and forest officials said that the previous boundary demarcation might have been done wrongly, in which case it would have been (conveniently) ‘corrected’ after the more recent Survey and Settlement.

During the initial reservation in the 1950s as well as extension of the RF in the 1980s the villagers claim that they were not consulted. Interestingly, when they were asked that whether they had complained to the Forest Department or the Revenue Department while the demarcation was going on, the villagers felt it would not make any difference, saying:

“Let *sarkar* [government] do



Plate 2: Forest Land in Nedipanga Saru Hill used for Cultivating Turmeric

⁴³ vide gazette notification no- 2662 LRS/XV-19/54

the measurement! Where would it take our land?"

No villagers have claimed rights over the lands they were cultivating on hill slopes during the settlement. However later they realized that these hill slopes which were previously under Village Forests had been declared as RF. Even long after the declaration of the Reserved Forest people continued swidden cultivation over the *Dersaru* hills, by then within the Reserved Forests. Badaparbat (an area located within the RF) was famous for its suitability for cultivation of red gram (*Cajanus cajan*) in the past. People pointed out that earlier even a small patch of cultivation of red gram on *Badaparbat* gave enough production for a household, from which they were exchanging for rice, cloth and other necessity from the market or *sahukars*.

Swidden Cultivation has almost stopped since 10 to 15 years ago. This is primarily an outcome of continuous pressure from the FD through warnings, filing of cases and fines (see Box 2 below).

Box 2: A Case Filed Against Shifting Cultivations in Manduguda

Sri Kameswar Pradhan, son of Sri Ananta Pradhan (aged 50), had traditionally practiced *podu* (swidden cultivation) on the hill slopes surrounding the village, but these became considered by the Forest Department within Reserved Forests. In 1997-98 he was cultivating two acres of land on Nedipanga Hills towards the north-eastern side of the Village. A case was filed by the Forest Department against him, along with other five persons. He appeared in G. Udayagiri court over a period of five years as the case dragged on. The case was finally adjudicated in 2003. He was fined Rs. 500/- with a warning not to pursue further shifting cultivation. He then completely left *podu* cultivation. During this period, wage labour in Government programs has become more abundant and turmeric cultivation has become an important source of income, making this transition easier for Kameswar.

Similarly seven years ago a forest offence case was filed against 15 other households by the Forest Dept. The villagers were cultivating red gram (Kandulla) on Dersaru ('big hill') in the Tudubali RF. The proceeding of the case was continued in SDJM Court, G. Udayagiri. No witness was found in the case and finally the case was dismissed in 2004.

Turmeric is still being cultivated on a few hills patches within the RF. Potentially suitable lands which have better soil and little or no vegetation cover are levelled and developed. In Nedipanga Saru hamlet, which is within the RF, turmeric is being cultivated by around 10-15 households. Turmeric is also cultivated on lower parts of Nedipanga Saru on land categorised as Khesra forests, village

forests and *Abad Ajogya Anabadi*. Apart from the land under turmeric cultivation, red gram is being cultivated on government land categorised as village forests in Kudimahhi Saru and Pakapanga Saru hills.

The villagers also depend on forests for NTFP collection and for compost material for turmeric cultivation. Mahua flowers and seeds are the major NTFP presently available. Sal leaves are collected for own use. Siali leaves are collected for sale and own use, however availability is said to be decreasing. The NTFP bearing trees within Khesra forest and village forests are customarily owned by and distributed among the lineage of families which have paddy land next to these trees.

Table 14: Cultivation in Khesra forest, Village Forest, Reserve Forest & Abad Ajogya Anabadi land by Mandaguda villagers

Household	Type of Land Cultivated*	Local name of the hill / forest area	Major crop
1	Khesra Forest, AAA	Nedipanga Saru	Turmeric
2	Khesra Forest, AAA	Nedipanga Saru	Turmeric
3	Khesra Forest, AAA	Nedipanga Saru	Turmeric
4	Khesra Forest, AAA	Nedipanga Saru	Turmeric
5	Khesra Forest, AAA	Nedipanga Saru	Turmeric
6	Khesra Forest, AAA	Nedipanga Saru	Turmeric
7	AAA Village Forest, Reserve Forest	Nedipanga Saru	Turmeric
8	Khesra Forest, AAA	Nedipanga Saru	Turmeric
9	Village Forest, Reserve Forest	Nedipanga Saru	Turmeric
10	Village Forest	Kudimahhi Saru	Red gram
11	Village Forest	Kudimahhi Saru	Red gram
12	Village Forest	Kudimahhi Saru	Red gram
13	Village Forest	Kudimahhi Saru	Red gram
14	Village Forest	Kudimahhi Saru	Red gram
15	Village Forest	Kudimahhi Saru	Red gram
16	AAA & Village Forest	Pakapanga Saru	Red gram
17	AAA & Village Forest	Pakapanga Saru	Red gram
18	AAA & Village Forest	Pakapanga Saru	Red gram
19	AAA & Village Forest	Pakapanga Saru	Red gram

*See Glossary for meanings

5.3. Community Forest Protection Initiative and Conflict Resolution

In recent years NIPDIT NGO has begun facilitating a Community Forest Protection initiative in Mandaguda. The village community decided to protect some patches of their forests, mainly Revenue Forests, to meet their future needs for forests and forest products. At present the general area under Reserved Forest is largely barren, but the area protected through the community initiative

has dense forest cover. Meanwhile, a proposal had come from Forest Department to form a Joint Forest Management committee (VSS), which was outrightly rejected by the villagers. Villagers said that

“Whether it is Reserved Forest or Village Forest we the people are protecting them with our own initiatives for our future needs. We would not involve the Forest Department. Hence, we did not involve Forest Department in the process.”

Sri Gokula Pradhan (a member actively involved in community forest protection)

Gokula also observed that if the Forest Department staff came to ‘guard’ the forest, hardly any forests would survive! This mistrust has deep roots in the area as the FD is perceived to be one of the most oppressive of Government Departments which has taken away customarily owned lands and asserted its control over these through coercion, including court cases, fines and petty harassment.

There have been a number of cases of inter-village conflict regarding intrusion into forest protected by one village community by the other villager. Usually these cases are resolved through mutual negotiations. For instance, 4 to 5 persons from Mandaguda entered into the Kudamaha saru forest protected by Ranjrabadi villagers and felled trees. In response to that Ranjrabadi villagers planned to cut the tree from Budamaha saru forest, which was protected by Mandaguda villagers. However, villagers from both the villages subsequently sat together and decided not to enter into each others protected forests in future. It was decided that if anybody needs anything from the forest, he or she has to take permission from the committee which has been protecting that forest.

Intra-community breaking of rules also occurs. A group of 12 persons of Mandaguda cut trees from Budamaha saru which is under the protection of Mandaguda Village. A meeting was called by the village *Yubak Sangha* (youth group) to discuss the matter. A fine of Rs. 20/- was imposed on each person and the matter was settled. Now, no one fells trees from the Community Protected areas without the prior permission of the Forest Committee.

5.4. Conclusions from the Mandaguda case

Like Pakari, more than half the land area within the Mandaguda village boundary has been categorised as Revenue Forests by the Survey and Settlement process. The villagers claim that nearly 20 years back the RF boundary was extended towards the bottom of the hills by the FD, converting much of the land of the village to Reserved Forests. This seemed to be a legal irregularity. However but wasn’t challenged by the villagers, and neither the FD record nor

the forest officials has any comment to make on this apparently irregular boundary extension. The villagers used to carry out shifting cultivation as well as permanent cultivation on land which has become categorised as Revenue Forests and Reserved Forests. No villagers' customary rights were recognised on such lands, and over a period of time, the villagers have been pushed out from the Reserved Forests by the Forest Department through court cases and coercion. The villagers continue to cultivate part of the Revenue forests, although shifting cultivation has been stopped in the area. The transition away from shifting cultivation has also been facilitated because other livelihood options have become available, including increased turmeric cultivation, migration to Kerala and wage labour. NTFP collection and sale is another important economic activity.

The livelihood dependence on forests is high, and is one of the reasons behind the village community taking up protection of forests on their own. Interestingly, the village hasn't allowed the Forest Department to introduce its Joint Forest Management program for the forests protected by them. Inter village conflict relating to Community Forest Protection are resolved through mutual negotiations. It was decided that if anybody needs anything from the forest, he or she has to take permission from the committee which has been protecting that forest.

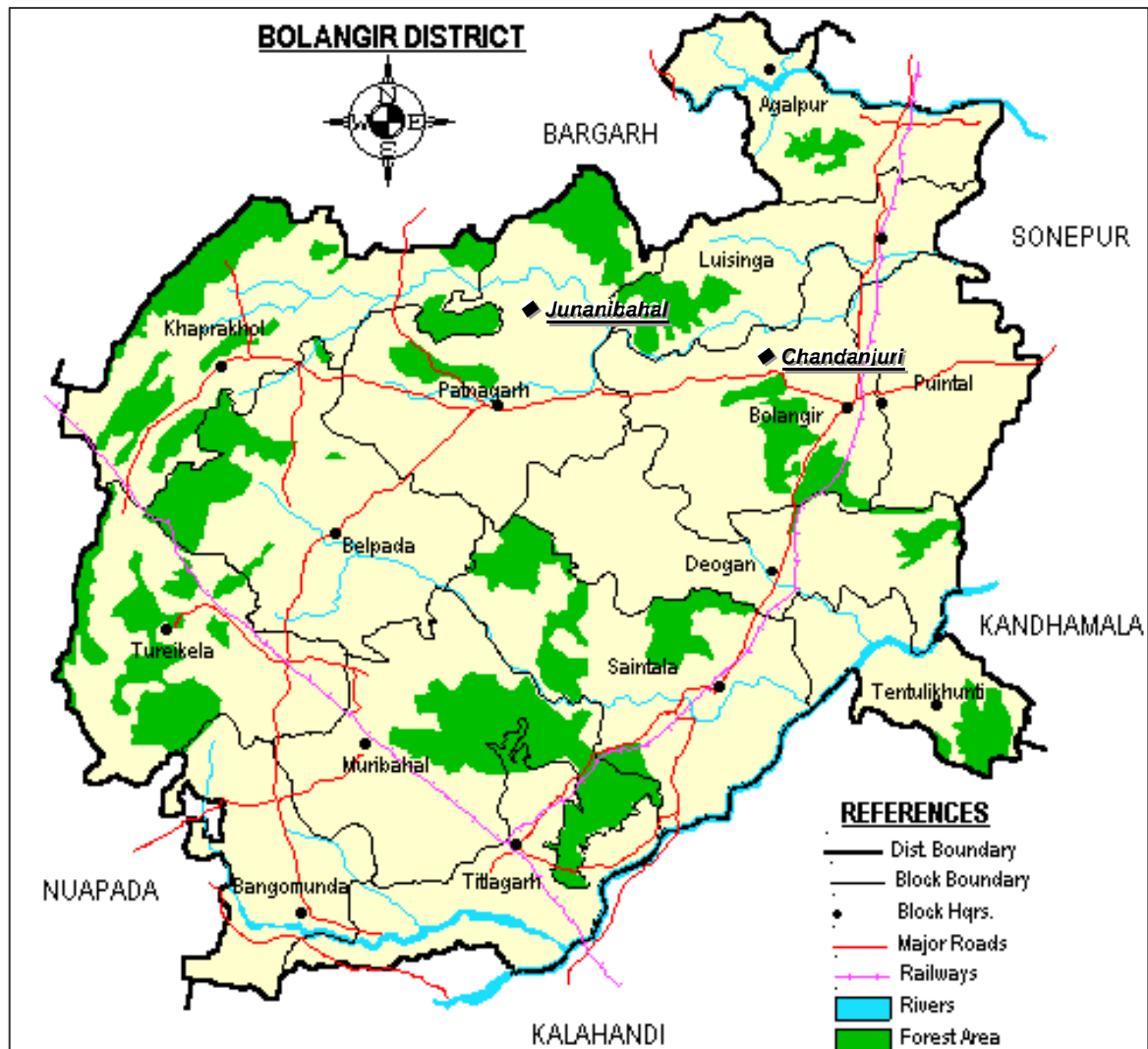
Section III: Bolangir District: The Politics of Land and Forest Control in Agrarian Landscapes

This section considers Bolangir District, which located in Western Orissa is a part of the Central table land agro-ecological zone, consisting of flat and undulating landscapes interspersed with isolated hill ranges, situated in the valleys of Ang and Tel rivers. The study villages were Junanibahal in Khaprakhol Block and Chandanjuri in Patnagarh Block. Both were originally part of the Patna Princely State which was merged with Orissa in 1948.

Junanibahal village is located in the plains below the famous Gandhamardhan Hill which form the border between Bolangir and Bargarh district. The village illustrates the dynamics of struggles over access to land and the local political economy around land and how community forest protection has become an extended part of this struggle.

Chandanjuri village is located around 60 km north-west of Bolangir town and 20 km north of Patnagarh, the block headquarters, near the boundary with Bargarh

District. The village is surrounded with natural forests, but illustrates the extent to which forest lands have been converted to agriculture, as well as the role of land distribution by State and the loss of land access because of Social Forestry plantations.



Map 5: Bolangir District showing study sites

6. Bolangir District Case Study

The Bolangir case study contrasts with the Kandhamal as having more agricultural land and a more peasantised population it has been under settlement and state taxation regime for far longer. Nevertheless forest tenures and rights have also been curtailed here in different ways.

A highly drought prone district, Bolangir has lost much of its forest cover in the last fifty years, and along with Kalahandi, has become infamous for its poverty and starvation deaths. Bolangir is a rainfed agricultural district, and its rural society is comparatively more peasantised than the tribal hill areas of

Kandhamal. The political economy of the rural areas of this district is closer to the agrarian economies of various rainfed, non-tribal dominated areas, with sedentary villages generally having heterogeneous communities. Land distribution is comparatively more skewed than Kandhamal district and consequently landless agricultural labourers form a large percentage of the households.

The District was reasonably well forested even up until Independence, but has seen massive deforestation in the three decades after independence, with large areas of forest land being converted into agriculture and other land use. This fast transition has led to scarcity of forest products, which is one of the reasons behind the large number of community forest protection initiatives that have started in the district since the 1970s. Forests and forest products such as Kendu leaves, mahul flowers and seeds still form an important part of rural livelihoods, especially for the landless.

Unlike Kandhamal, where State intervention in disciplining landscapes had barely started as late as half a century ago, Bolangir has seen state intervention in local land administration since at least the Mughal times, and Survey and Settlements started in the 1870s. It has thus gone through various rounds of Survey and Settlements for more than a Century. Even reservation of forests by the Princely State started almost a century ago.

The agrarian economy revolving around land is more diversified and structured than in tribal areas, and the agrarian inequalities have meant that the local politics revolves primarily around land and access to land. Unlike in Kandhamal, structural inequities in land and labour markets mean that the major conflicts, are not between the peasantry and the State but intra-community, between the large landowners and marginal farmers or agricultural labourers. The historical structure of land tenure in the area has had a major role to play in these inequities, and history plays itself out even now through conflicts and oppression. Forests, cultivation on forest land and even community forest protection become a part of the local power dynamics, with hidden and unanticipated outcomes.

Bolangir district also illustrates the often unanticipated outcome of government initiatives like distribution of ceiling surplus land or Social Forestry plantations; the dynamics surrounding these processes and how these have impacted access to land.

The total population of the district is 1,182,871 (2001 Census) of which 23% are Scheduled Tribes and 17% are Schedule Caste. Among the Scheduled Tribes, the major tribes are Gond, Kandhs, Saura, Binjhal, Shabara (Lodha), Munda, Mirdha,

and Dal. The literacy rate has increased to 54.93% (2001) as against 38.63% in 1991. The female literacy rate is very low, at almost half the male literacy rate.

6.1. Socio-Economic Indicators

More than 80% of families in the district are officially Below Poverty Line families (1997 survey). Small and marginal farmers are in the majority (45,986 and 78,342 respectively). A large population of 131,447 work as agricultural labourers and there is heavy migration to neighbouring states and the major cities of Orissa. The District ranks 21st (of 31 in Orissa) on human development index⁴⁴ as per Orissa's Human Development Report and is categorised within the so called Backward KBK (Kalahandi, Bolangir, Koraput) Districts.

6.1.1. Landholding Pattern in Bolangir District

Almost two-fifths (43%) of Bolangir District's area are privately owned lands settled with tenants. Forest lands comprise 23% of the total district area, whereas non-forest land owned by the Government comprises around 34% of the district area. This is illustrated in Figure 16 below.

The total number operational landholdings in Bolangir district is 193,535 covering an area of 277,779 ha (Agricultural Census 1995-96). The vast majority of the landholdings are either marginal or small, who constitute approximately 64% of the rural households in Bolangir District and own approximately 120,600 ha. of land.

Landless households form 14% of the households in Bolangir, small and marginal landowners constitute another 64%. Together these classes (i.e. landless, marginal farmers and small farmers), which comprise 78% of the total rural households own only 43% of patta land. When the total land in the district is taken into consideration, these 78% households have rights over only 18% of the land in the district, with the State owning 58%. However, the average landholding per household of these three classes only 0.5 ha of rainfed, drought prone agricultural land.

⁴⁴ The HDI is a simple summary measure of the average achievements in a District in respect of three basic dimensions of human development namely health attainment (As measured by IMR), educational attainment and standard of living.

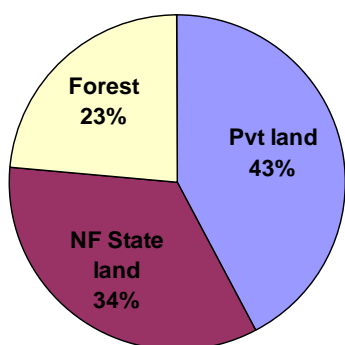


Figure 16: Legal Land use pattern of Bolangir District

Source: Agriculture Census 1995-96, Government of Orissa.

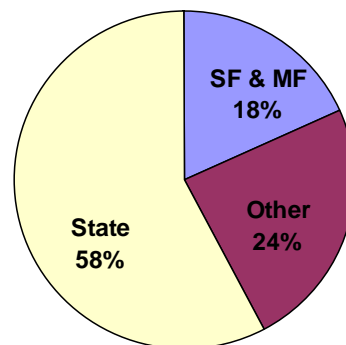


Figure 17: Land holding pattern of Bolangir District

Source: Agriculture Census 1995-96, Government of Orissa.

Caste wise analysis of landownership pattern shows that on an average Scheduled tribes and Other Castes own more land per household (1.53 ha/hh and 1.51 ha/hh respectively) whereas SCs tend to have the least land (0.97 ha.).

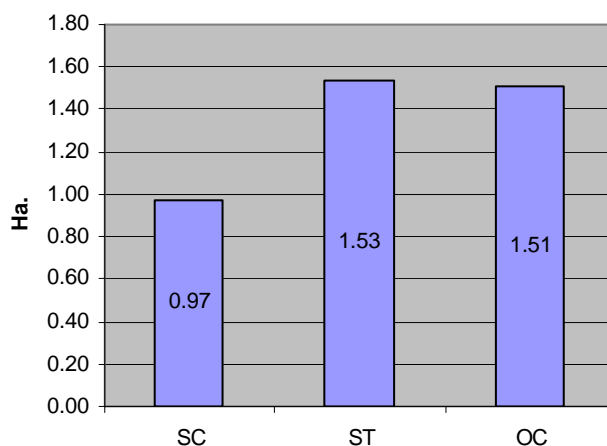


Figure 18: Average Landholding per household by group

Source: Agriculture Census 1995-96, Government of Orissa.

Irrigated land forms only 6.62% of the total landholding area. Again, only 4.42% of the land of the Scheduled Castes is irrigated whereas 7.2% of the land owned by Other Castes is irrigated. However, this data shows only the position of legally owned lands as per the Record of Rights and may not reflect the actual situation on the ground, as illegal alienation of SC and ST land is common. Also much Government land is being cultivated on the ground, which is not reflected in this official data.

6.2. History of Land and Forest Tenure in Bolangir District

Before Independence, the current Bolangir district was part of Patna Princely State. The early political history and territorial position of Patna shaped its village revenue system which is similar to the systems in Sambalpur and Chhattisgarh. The ex-estates of Patna and Sonapur along with two other ex-estates formerly formed a group known as the Sambalpur Garjats which became tributaries to the Marathas of Nagpur. Before Independence, the Princely State land tenure system was based on feudal intermediaries called Zamindars, Umras and Gaontias. The peasantry had no rights on land and were treated as tenants.

The main subdivisions of the Patna ex-state were

- The area directly administered by the Princely State (*Khalsa*).
- Two *Zamindari* estates (Jarasingha and Agalpur) held by relations of the Maharaja known as *Kharposdars*.
- Five hereditary *zamindari* estates (Atgaon, Loisingha, Pandrapani, Balbuka and Mandal) held chiefly by Gond Thakurs.
- Five *Zamindari Binjhal* Estates (Remud, Nandupalla, Bahanpur, Khaprakhol and Khuripani) held by Binjhal Chiefs.

The next layer of tenure holders was called Umrahs. There was 23 such petty tenure holders direct under the Princely state each having 5 to 53 villages under them. There were also some Umras under the Zamindaris and Kharposdars.

The peasantry was directly administered and taxed through the institution known as *Gaontiahi*. The *Gaontias* were often the first families which settled and cleared an area and who were given the responsibility of collecting rent and administering a village. The villages were also sometimes leased out to the highest bidders who came to be known as *Gaontias*. They collected rent from the peasantry and paid it to the higher authorities. The rent to be paid by the *Gaontia* was fixed during settlements and he was bound to pay it or lose his tenure. The *Gaontia* had the right to evict a peasant for non-payment of rent, but the *Gaontias* had no proprietary right in their villages.

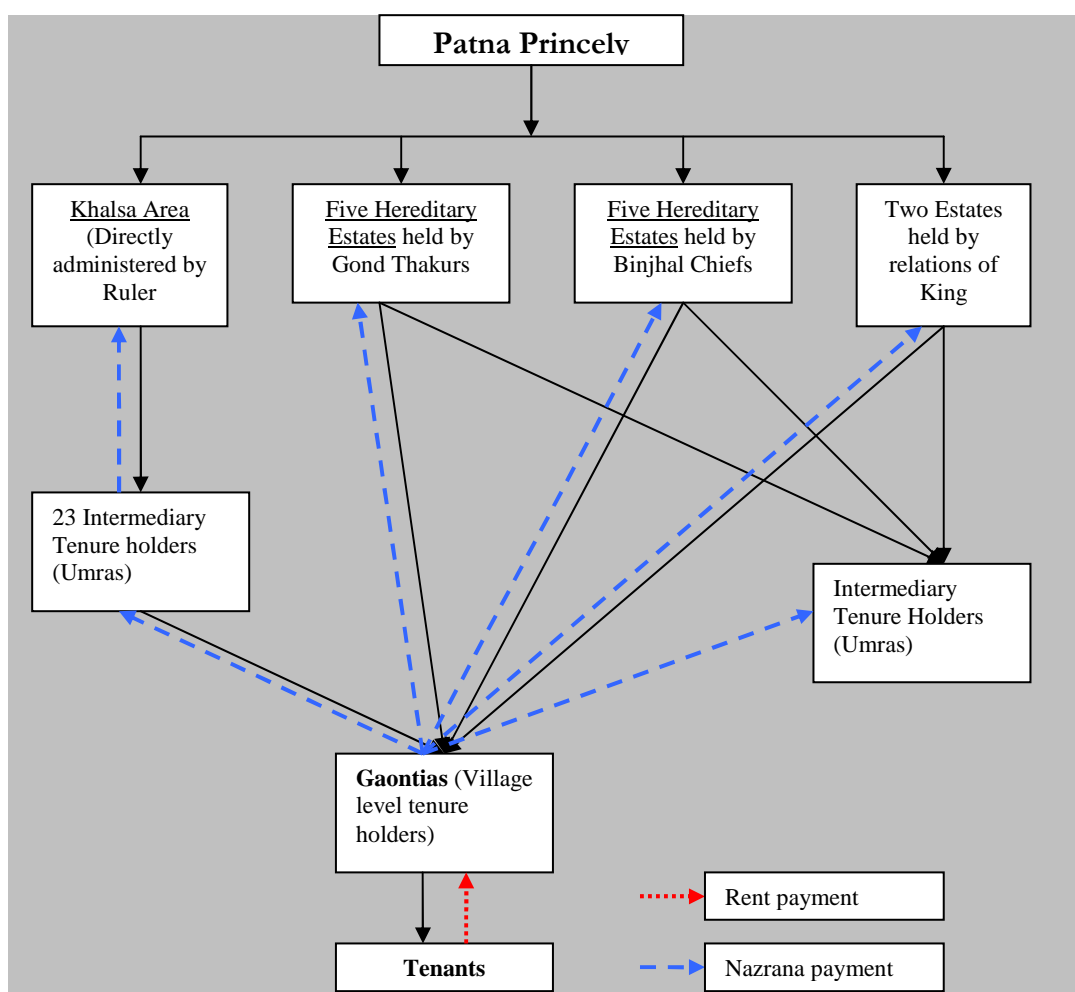


Figure 19: The Land Tenure System in the Patnagarh Princely State

Table 15: Tenure systems in the Sambalpur Garjats, Patna Estate

Period	Historical Process
1755	Sambalpur Garjats (including Patna Princely State) formed tributary of Marathas of Nagpur.
1803	Sambalpur Garjats ceded to British by a treaty.
1806	Restored to Marathas.
1818 - 1861	Again restored to British under the control of the Bengal Government and later under Central Province.
Before 1871	Villages leased to the highest bidders (for tax collection).
After 1871	Summary enquiry leases given to Gaontia.
1876-81 & 1885	Sporadic efforts at Revenue Land settlements were made. Gaontias and tenants left to themselves to apportion the increased rent.
1895-96	A regular and comprehensive revenue settlement was made. Gaontia were given a 20% drawback (in some cases more). The Gaontia was supposed to assign lands to village servants like Ganda, Jhankar and Nariah as remuneration.
1903- 1919 -	The next settlement of the State.
1905	Transferred to Orissa Division.
1932-37	A revision settlement was done - An innovation was made in this settlement. The wastelands were divided into two categories; one category was recorded in state Anabadi and the other in the Thikadars Anabadi Khata.

Box 3: The Gaonita System

There were several intermediaries between the cultivator and the King of Patna estate. The *Gaontias* were typically the first settlers and were given *thikadari* (i.e. headman) status of the village. Often the *Gaontias* also owned the largest areas of land in the village. The *Gaontias* subsequently provided land to *Parajas* (tenants) in their area.

The tenants of Junanibahal village paid rent to the *Gaontia* of the village, who in turn paid it the *Umra* of neighbouring Bagjharan village. The *Umra* of Bagjharan, a Binjhal who also controlled the land revenue of Dudundhara, Kendrabhata, Nuapali, Nandupalla, Maharapadar, Bagjharan, Junanibahal and Karlamal, paid rent to the Zamindars of Loisingha.

The *Gaontia* was responsible for paying the revenue to the *Umra* at any cost and had the right to evict anyone not paying tax. For instance in Junanibahal village, Ranjit Dharua was commanded to vacate his land as he could neither pay tax nor was willing to go for *bethi* (labour in kind).

Box 4: Zamindars and Kharposdars

Two of the five big tenure holders were related to Raj family and they were granted the tenures for their maintenance so they were known as *Kharposdars of Jarisinga and Agalpur*. Kings of Patna Estate created *Kharposdars* for maintenance of their sons. The *Zamindaris of Atgan, Bangomunda and Louisinga* were created to reward those who provided valuable military services to ruling chiefs in subduing rebellions. The status of these tenures as well as the obligations, duties, rights and privileges were embodied in the *Sanad* granted by the King of Patna State to the *Kharposdars* and *Zamindars*. The *Kharposdars* and *Zamindars* had the right to collect and appropriate land revenue and cess on ferries subject to their control. They had to pay to the ex-state *Takoli* and cesses were fixed from time to time. Besides these major tenure holders, there were also petty tenure holders who were known as *Umras*. There were 23 such petty tenure holders directly under the state having between 5 to 53 villages under them. There were also some *Umrahs* under the *Zamindaris* and *Kharposdars*.

6.2.1. Organized Land Settlement Processes⁴⁵

As per the 1909 Gazetteer, the system of settlement prevailing before 1871 was to lease the villages for four years to the highest bidding *Gaontia* / *Thikadar*. In practice, most Gaontias were the original settlers of the villages. The *ryots* had no rights in the land and could be ejected at the will of Gaontia (although this was rarely done due to the paucity of tenants). Village assessment of rent was done on the basis of seed capacity throughout the Princely State. The Gaontia had the right of disposal of lands which were deserted or of new lands. He enjoyed all his *bhogra*⁴⁶ land free in return for the *nazarana*⁴⁷ paid by him.

In 1871 a summary enquiry was made and leases were given to the Gaontia who in return had to sign *Kabuliyats*⁴⁸ -a new introduction in the history of revenue administration of the ex-state.

In 1895-96 a regular settlement was made. The better cultivated area of Gondti Pargana of Patna estate was surveyed through the plain table survey method, while Binjhalti Pargana was roughly assessed. During this settlement, the Gaontia was given a 'drawback' of 20 percent and in some cases more of the total rent assessed for the village. The Gaontia was supposed to assign lands to village servants like Ganda, Jhankar and Nariah as their remuneration for their services.

The next settlement of the state was started in 1903 and concluded in 1919. Again in 1932-37⁴⁹, a revision settlement was done. An innovation was made in this settlement, in that the wastelands were divided into two categories - one category was recorded in State Anabadi and the other in the Thikadars⁵⁰ Anabadi Khata. The Thikadar (gaontia) could allot wastelands out of his Anabadi Khata for purpose of cultivation, whereas wastelands recorded in the state Anabadi Khata could not be reclaimed without the sanction of the state.

All lands recorded as 'culturable fallow' in the settlement records could be reclaimed by ryots with the permission of Gaontias. If the Gaontia did not object to the reclamation of any 'culturable waste lands' by any ryot within two years of such

⁴⁵ As per *Ramdhayani Report*, page 206-207

⁴⁶ Land allocated to Village headman for which he didn't have to pay rent.

⁴⁷ Gifts paid by Village headman to the state in addition to the fixed rent for the village.

⁴⁸ The lease document between the Thikadars (intermediary tenure holder) and the State for the village under the Tenure holder. Under the *kabuliyat* the intermediary holds the *thica* (contract) of an area for a period of fifteen years or till the next settlement.

⁴⁹ It is mentioned in the settlement report of 1937 that the earliest regular settlement in the state had been completed in 1896 for Khalsa portion only and not for Zamindaries and Kharposdars. It was carried out according to the method prevailing in the central provinces.

⁵⁰ An innovation was made in 1932-27 settlement and wasteland was divided into thekadari and state lands. Thekadari Anabadi khata simply refers to those wastelands which could be allotted by the thekadar or Gountia for cultivation, and those which didn't require state sanction for allowing cultivation on wasteland.

reclamation it was to be presumed that the reclamation was made with his permission.

This intermediary tenure system to facilitate revenue collection by the State meant that all the power at the village level rested with the Gaontias who effectively controlled the villages. The intermediary systems were abolished after Independence in 1952⁵¹, and cultivators became direct tenants of the State of Orissa. While abolishing the intermediary tenure holder systems, the Gaontias and other higher tenure holders were allowed to retain the “bhogra land” subject to the land ceiling which was initially 33 standard acres. This allowed most of the intermediaries (Gaontias and Umras) to retain almost all the land that they had personally owned and gave them the space to control the local political economy even after independence.

Box 5: Special Provisions in the Patna Forest Rules

Chapter on Village Forest

Rule-21: The rules relating to the protected forests shall apply to village forests with the modification given below:

The ryots can break up or clear any forest area for cultivation or for any other purposes, provided that the previous permission of the dewan or superintendent is obtained. The trees thus felled belong to the state and may be disposed off as the forest officer thinks proper.

Patna Feudatory state forest related law

Rule 16: Any forest cess paying citizen can do following things

- A. Except Reserved categories of tree and bamboo the citizens can have access to any forest produce for *bonafide* use. But they cannot exchange, sell or gift anybody these produces.
- B. Can graze their own buffalo/cow etc.

6.3. Forest Conservation in Patna Ex-state

Forest conservation in Patna Ex-State began to receive attention in 1886 when the then Commissioner of Chhattisgarh Division drew the attention of the political agent to the necessity of setting aside and conserving the state’s so called ‘wastelands’. The settlement of such lands was carried out in course of settlement operations between 1887-90 but conservancy of such lands was confined to hills and jungles which had not been in actual possession of any individual or community. In such tracts selected forest areas were demarcated separating them from the village areas. The state forests were divided into three categories (a) State Forests (b) Malguzari Forests (c) Zamindari forests.

⁵¹ The Orissa Estates (Abolition) Act 1952.

Box 6: Conflicts of Interest with the State for Forest Rights

“It appears that raiyats of this state are not favourably disposed towards the reservation of forests. Perhaps they think that Forest Department is encroaching upon their rights which they formerly enjoyed in the state forests.”

“It is noteworthy that the Forest Department of this state has been overzealous in enforcing the forest rules of the state. Although the forest rules allow the raiyats to cut down trees of any species standing on their cultivated and assessed lands (except the fruit bearing trees that may be used as shelter for cattle) in the interest of cultivation, the Forest Department has been stringent in not allowing this privilege to the raiyats, with the result that large areas belonging to rayati holdings get converted into jungles.”

Source: Settlement Report, 1932-1937, Patna State, page 5

From time to time, further additional areas, which had been overlooked during the settlements operations, were added but still a good chunk of forests was left outside the State forests, as the then officers considered reclamation of the wasteland and extension of cultivation more important than the conservation of forest and also the provision of a permanent supply of forest produce. Subsequently, various efforts were made and orders passed to regulate removal of forest produce from the forests⁵².

The *Zamindars* had been allowed to do whatever they liked with their forests, but in the year 1910-11, all such Zamindari forests were taken over for management by the state and they were included in the existing blocks notified as “Reserved” in 1907.

In 1910, the political agent recommended that certain areas of waste lands, where the forests were already denuded or were undergoing rapid denudation and which were essential to supplement the supply of forest produce, should be included in the reserves⁵³.

6.3.1. Classes of Forests

There were three classes of forest as per the settlement of 1932-1937:

- **Reserved forests** (about 297 Square miles) - The tenants had no rights in Reserved Forests. The IFA, 1927, and the ex-state and forest rules prohibited breaking of land for cultivation inside the Reserved Forests.

⁵² Working Plan 1980-2000, page 79

⁵³ Working Plan 1980-2000, page 79

- **Protected forest** (about 123 Square miles) – These forests had been demarcated and set apart for the supply of demands of the tenants. 15 species of trees had been declared reserved within the protected forests, which the tenants had been prohibited to fell or damage. Other species could be obtained on payment of forests cess for bonafide private use. Cultivation with permission was allowed in these lands.
- **Village forest** (about 269 Square miles) - Villagers used the forest for their respective needs of fuel, leaves, timber of non prohibited trees for construction of houses and agricultural implements from village forests but they could not sell these to any body. Cultivation with permission was allowed in these lands.

6.3.2. Rights over Trees during the Patnagarh State Regime

- The fruits of Mahul and other fruit-bearing trees on waste lands within the village boundary were used by the village community according to the prevailing customs.
- Fruits of trees grown by *raiyats* on any waste lands in the village were enjoyed by the *raiyat* who grew them and his heirs. (Settlement Report, Patna state, page xv).
- Fruits of Trees grown by a *raiyat* on the lands in his holding were enjoyed by the Raiyat and his successors in interest and the timber of dead trees.

6.4. The Present Status of Forests in Bolangir

Bolangir Forest Division is responsible for all forests in the Bolangir and Sonapur Districts (undivided Bolangir District). The area of the various categories of legal forests is as under:

Table 16: 'Legal Forests' of Bolangir District (sq.km)

Geographical Area	Reserved Forests	Un-classed Forests	Demarcated Protected Forests	Un-Demarcated Protected Forests	Other Forests (Revenue Department)	Total Govt. Forests
6,369	1105.68	0.14	3.63	0	434.4	1,543.85

Source: Orissa Forest Report, Statistical Branch, PCCF Office, Bhubaneswar

Table 17: 'Physical Forests' of Bolangir District (sq.km)

Geographical Area	Very Dense Forest	Moderately Dense	Open Forest	Total Forest	Percentage of district area
6,575	0	352	600	952	14.48%

Source: Forest Survey of India 2003

6.4.1. Reserved Forests (Bolangir Forest Division)

The earliest reserves in Bolangir Forest Division were notified by the ex-Darbar administration of Patna ex-state in the year 1907. Eighteen Blocks were declared as reserve forest as per the notification of the ruling chief, dated 14-10-1907. Further Mahadesani, Chakaguja, Budharaja, and Sikerpat blocks were declared as reserves. Since then, between 1924 and 1938, several other Blocks were ordered by the ruling chief to be constituted as reserve forests and altogether 92 Blocks of Patna ex-state were declared as Reserve forests by 1st May 1938. Bangabahal and Kadalimunda blocks were ordered to be formed as reserve forests between 1938 and 1948. Thus 94 R.F blocks existed in Patna State before its merger with Orissa. The appropriate original notifications and orders constituting these blocks as reserve forests are not traceable now.

Post Independence, in 1954 the Government of Orissa amended the Indian Forest Act, 1927 which provided that all areas which were Reserved Forests in the Princely States would automatically be 'deemed' to be Reserved Forests under the IFA, 1927. Through the amendment, the Section 20-A(4) of the IFA, 1927, also laid down that

"Forests recognized in the merged territories as Khesra Forest, village forest or protected forests or forests by any other name designated or locally known, shall be deemed to be protected forests within the meaning of the act."

Thus the Government converted all Reserved Forests and other forests in merged ex-state areas into Reserved Forests or Protected Forests, as defined under the IFA, 1927. Thus all the 94 RF Blocks in Patna State were converted into deemed Reserved Forests in 1954. Besides these 94 deemed RF Blocks, the thirteen blocks as below were constituted as Reserve Forests during 1975-76 and 1979-80 *vide* notification under Section 21 of the Orissa Forest Act, 1972.

Thus almost all Reserved Forests in Bolangir are deemed Reserved Forests which had been originally declared under the Patna State Forest Rules. (The Reserved Forests of the division is of two types: A class and B class).

Table 18: Forest Blocks and the area in Bolangir District

Name of the Range	Name of the Block	Area
Bolangir Range	Hathikhol	115.6
	Kalijharan	259.7
	Budengagen	250.39
	Barpudgia	540.65
	Kutasingha-Pandridungri	77.04
	Kalijakhai	51.70
Titilagarh Range	Khatpati	338.20
	Sindheikela	336.95
	Bahalipujadungri	352.15
Muribahal Range	Bastrani	455.83
	Chanutmal	224.40
Patnagarh	Damkipali	327.90
Khaprakhol	Beheramunda	180.95

Source: Working Plan for the Reserved Forests of, Bolangir Forest Division, 1980-81-1999-2000, Forest Department, Government of Orissa.

6.4.2. Cultivation on Forest Land

Cultivation on forest land is common in most of the plain forests and valleys inside the Reserved Forest blocks. Quite a number of patches have long since been encroached upon and sizeable areas have been affected by permanent cultivation and erection of houses by people. Large patches of cultivation on forest land are present in Chhataradandi, Bakbahal, Rajoo, Ganjaudar, Tikhari, Lamithuta, Bernai, Butikuradi, Badsulia, Chandi (in Bolangir Range), Siskela and Sulia Reserve forests ranging from 5ha to 120ha as per the Working plan. However, the actual level of cultivation on forest land, especially revenue forests is much higher. This situation has led to regular conflicts between Forest Department and local communities.

Table 19: Forest Land under Cultivation (according to FD Records)⁵⁴

Range	Block	Area 'encroached' (ha.)
Mohakhand	Chattradandi	120.00
	Bakbahal	66.80
	Rajoo	34.80
	Ganjaudar	44.00
	Lamithuta	36.00
Muribahal	Tikhari	165.39
Bolangir	Chandli	139.28
Titilagarh	Siskela	5.00
Total		611.27

⁵⁴ Working plan, Bolangir Division, 1980-2000, Page 371

Box 7: Disputes over the Status of Forest Land in Bolangir District

There are many forest areas of the Bolangir District where there are old habitations of tribals and forest dwellers inside the Reserved Forests, Proposed Reserved Forests or Protected Forests. The villagers claim to have inhabited these areas prior to their classification into different forest areas and assert their customary rights over land. These claims are however termed as illegal by the Forest Department. Most of these areas come within Dikhari Reserve forest under Muribahal block of Titlagarh Tahasil, Sikarpat Reserve forest under Tusra Tehsil, Tureikela and Bongamunda block etc.

One example of such a dispute between the Forest Department and tribals was highlighted in Peruamal village in Dikhari Reserve forest of Muribahal block. The community members of this village claim to have stayed there since hundred fifty years. But this village lacked either revenue or forest village status. In the year 2000, when the people of this village were digging a small water tank, they were charged by the Forest Department for clearing and encroaching forest land. Following this incident the villagers were harassed and 11 persons from the village were imprisoned. Thereafter a long political mobilisation was initiated by local organizations with the help of other forest villages in the area, and finally the release of the jailed persons was achieved. Representatives of the Human Rights Commission visited the place and the issue was highlighted in the media. There are 9 such habitations in this reserve forests where the disputes between Forest Department and locals are still going on.

6.4.3. Rights and Concession in favour of Local Inhabitants

Certain limited rights have been admitted in favour of the local inhabitants of the villages neighbouring Reserve forest Blocks, and these rights are inheritable.

- They are permitted to graze their own cattle other than goats subject to payment of the sum as grazing fees.
- Collection and removal of the following minor forest produce free of charges are allowed for domestic consumption only- . Tamarind, Mahua, Siali Leaves, Fibre, Thatching Grass and Edible roots and fruits.

7. Junanibahal Village Case Study

Junani Bahal village illustrates the extreme difficulties of improving the land assets of marginalised households in the context of asymmetrical village power structures. Despite repeated land reform provisions, implementation of land reforms has generally led to elites consolidating their predominance and landless households becoming further marginalised.

Junanibahal village falls under Telenpali Gram Panchayat of Khaprakhol block and is 30 Km from Patnagarh town. The population of 48 households is divided into three

groups based on agrarian relations, namely families descended from the *Gaontia* (66%), *Paraja* (17%) and *Sukhbasis* (landless households) (17%). Of the 48 families in the village, 45 are Scheduled Tribes, 2 are Scheduled Castes and one is Other Backward Caste. The dominant tribal group are Gonds, with Mallick, Dharua, Bhoi, Puta and Majhi sub-groups. Three quarters of households are identified by the government as below poverty line (BPL) families, therefore deserving of welfare benefits.

Origins of the village: According to the older residents, in earlier times the area was covered with dense forest and wild animals were common. Different family groups cleared forest in patches and occupied land within the village area during the late 19th Century and first three decades of the 20th Century. These lands were later regularized in their name during land settlement processes. The social groups (families) who came first occupied the better quality land, also establishing the landholding and power dynamics of the village.

The Bhoi or *Gaontia* families were first settlers. Subsequently the Mallick and Dharua or the *Sukhbasi* families followed the earlier settlers and cleared forest for cultivation. However, land clearance by *Sukhbasis* did not lead to entitlements over the land.

One Gond and one Binjhal family had come as the first settlers in the late 19th Century and cleared forests in a place popularly known as Padara, around ½ Km from the present village site. Later they moved to the nearby village of Karlamal. Another small group of Gond settlers led by Kartik Bhoi followed these two families around 1896. These groups had met the *Umra* of the Bagjharan (the village adjacent to Junanibahal), who invited them to clear forest along the stream of Junanibahal. Kartik Bhoi is considered the founder of the village, was widely hailed as a popular leader and an expert hunter. He established his father Sunder Bhoi as the first *Gaontia* of the village. He subsequently invited his brothers-in-law who were Mallicks. Kartik's brothers-in-law further also gradually brought their own brothers-in-law. As in the Khaprakhhol area, the Binjhals mainly fulfilled the role of priests, worshipping the village deity, the Gonds of Junanibahal also invited one Binjhal Family to fulfil this role. However he left after a few years and now a Binjhal family from Karlamal is fulfilling the role of priest.

7.1. Livelihood Context

Agriculture and forest product collection are the primary sources of livelihood for the majority of the population in Junanibahal village. While agriculture provides for nearly 65-70% of livelihood incomes on average for all families, forest produce such as Mahua, Harida, Bahada, Kendu leaf, Tol oil and char also contributes up to 30-35% of livelihood needs every year. The dependence on forests resources such as forest produce, forest land and small timbers is much higher amongst the seven landless families compared to those who own land.

7.2. Status of Land Ownership in the Village

Land ownership records reveal that private (*patta*) land constitutes nearly 75% of the total 486.94 acres of land in the village. However, the land distribution pattern is skewed among the different social groups, with the Gaontia (village headman)'s family and close relatives owning nearly half (45.21%) of the total. In addition to this, the in-laws brought to the village by Gaontia families own a further 13% of the land. On the other hand, landless families have been struggling to retain the 'ceiling surplus' land distributed to them by Government under the land reforms program, due to the predations of the elite *Gaontias*.

Table 20: Land Ownership in Junanibahal

Amount of Land	No. of families
Above 10 Acres	6
5 to 10 Acres	10
2 -5 Acres	20
1- 2 Acres	4

Table 21: Category-Wise Land Ownership

Category	Total land
ST	367.61
OBC	13.13
General	3.31
SC	2.00
Total land	390.79

Table 22: Legal Categories of Land in Junanibahal

Different categories of Land	Area (acres)
Private land (<i>patta</i> land)	385.43
<i>Rakhit</i> or reserved land	85.95
<i>Sarbasadharan</i> or communal land	9.64
<i>Abad jogya anabadi</i> or cultivable waste	4.74
<i>Abad Ajogya Anabadi</i> or uncultivable waste	1.18
Total	486.94

The proportion of private land to Govt. land in the village is high compared to than in the tribal district of Kandhamal discussed above. *Rakhit* (reserved land) and *gochar* (grazing land) constitute 58.85 acres and village forest 25.21 acres. Such a high proportion of *gochar* land is quite unusual. But it doesn't serve the purpose of livestock grazing for which it was formally reserved, as it is covered with dense forest and local people claim it was improperly classified as *gochar* during the settlement of 1932-1937. Currently the forest is under the protection of villagers and popularly known as "*gochar* forest".

The total amount of cultivable land in the village is around 400 Acres, out of which paddy land (*Bahal Kism*) is around 80 acres, medium quality agricultural land (*Berna*

Kism) around 122 Acres and upland plots (*Aat Mamuli*) form 195 acres. Nearly 62% of cultivable land is *ata kism* or upland which is less productive, and many families have switched over to market oriented cotton cultivation owing to the poor quality of the village land. Most of the land is owned by Scheduled Tribes, the largest social group in the village, which includes the most powerful social group in the village, the *Gaontia* families who own the best quality paddy land.

7.2.1. Land Survey and Settlement Processes in Junani Bahal

According to Rajendra Dharua, one of the older members of the landless *Sukhbasi* community;

“Agla jami survey bele survey bale asi kari gauntia manke pachrauthile. Jar pakhe takat take pachrauthile. Kete jami ulta na re record heiche. Amar kete sukhbasi mane he agla survey belu gaone thile. Hemanke zami nai dele. Aur pachar survey ne bhi zami nai dele.”

(During previous land surveys the survey officials used to consult only the powerful; the village headman or the Gauntias. Much land was consequently recorded in the wrong names. We Sukhbasis were also in the village - they settled no land in our names. Even in later settlements they didn't give land to Sukhbasis).

According to villagers, the grazing (*gochar*) land had been demarcated during the earlier settlement of 1932-1937. The ancestors of *Sukhbasi* families had not received land during that settlement despite being present in the village. Some *Sukhbasi* families left the village after this Survey and Settlement and moved to the interior forest in the Butel Reserved Forest area.

Besides these issues, the most recent Survey and Settlement of the 1960s also involved the contentious issue of the distribution of part of *Jhankar* and *Chowkidari* land after the abolition of the *Jhankar* system in the District, (Govt. notification 5703-P, 1965). According to villagers, the village headman and the *Gaontia* family played a key role in the preparation of records of *jhankar* land and their distribution to some influential families of Karlamal.

Box 8: Marginalization of *Sukhbasi* Families

During both land settlements land was not settled in the name of the forefathers of seven *Sukhbasis* (landless) families, even though they were amongst the early settlers of the village. Some *Sukhbasis* families even left the village during early 1940s as land wasn't settled in their name. Some respondent families in this study opined that the last settlement was not properly conducted and lands were thereby settled in the name of powerful people who occupied other marginalized groups during settlement.

All the *Sukhbasis* families claimed that their forefathers had been staying in the village as early settlers and were present during all the revenue settlements carried out in the village. Only the family of Fakira Dharua had settled after the settlement of 1963-64.

However land was not settled in the name of *Sukhbasis*. There were also instances of informal selling of vast amount of land to *Gaontia* at artificially low prices. Ghasi Dharua claimed that his grand father sold around 12 acres of land to Pita Gaontia prior to Independence at a very marginal price, probably under pressure. Later these lands were settled in the name of *Gaontia* families during the Survey and Settlement. Similarly the family of Harilal Dharua was debarred from cultivating in *Gochar* forest despite losing his entire *Jhankri* land.

Additionally, *Sukhbasis* families' access to the village *Gochar* forest became limited only to NTFP collection.

7.2.2. Land Reforms Programme in Junanibahal

Based on the land reform laws passed by the State Government in the 1960s and 70s, attempts were made during 1975-1980s to redistribute 'above ceiling' land from *Gaontia* families to landless families. After the abolition of *Jhankar* land in 1965 in the district, the Revenue Department took control of half of these lands and in many places distributed them among landless families. These initiatives to improve land access for the poor faced many difficulties during implementation at the ground level, owing to the asymmetric power dynamics between *Gaontias* and *Sukhbasis*.

In Junanibahal the *Gaontias* or the village headman families were not only the most powerful groups but they also outnumbered other *Sukhbasi* or landless families. The *Gaontias* historically enjoyed a dominant social position within the village and employed some of the *Sukhbasis* as bonded labourers until as recently as the 1990s. Thus the land survey and settlement processes witnessed the dominance of *Gaontias* and the marginalization of *Sukhbasis*.

The Government took over ceiling surplus land from the Village headman or *Gaontia* in 1978 in accordance with the provisions of Orissa Land Reforms Act 1960, and distributed it amongst the landless *Sukhbasi* families. However, given their marginalized position, the *Sukhbasi* families have not been able to retain these lands. In some cases, the *Sukhbasi* families claimed the revenue officials did not demarcate their recorded ceiling surplus land clearly and these lands remained with the *Gaontias*. The distribution of *Bhogra* land that earlier belonged to village headman as rent-free land also met with similar problems. Though these lands belonged to *Sukhbasi* families on paper, they could gain access to only part of their land and most of this land remains in possession of the *Gaontia* families.

The land reforms and the associated attempt to provide land to the landless families also led to a backlash from the powerful families in the villages. There were conflicts between the *Sukhbasis* and the *Gaontia* families which led to disruption of regulatory mechanisms for managing common resources of the village including forests. The process of reforms attempted on different categories of land in the village and their actual status is discussed below.

Status of Jhankri Land

Jhankri land is cultivable land which used to be given as a service grant to the village guards by the *Gaontias*. According to Home Department notification no.5703-P, dated 27th February, 1965 *Chowkidari* and *Jhankar* systems were abolished from Bolangir Subdivision, with effect from 1st May, 1965. Since a *Jhankar* in Bolangir district functions both as a watchman and the village priest, his position was partly affected by the 'Orissa Office of Village Police (Abolition) Act' 1964. According to this Act 50% of the *jagir* lands held by *Jhankars* were to be retained. But immediately after the abolition of the *Chowkidari* and *Jhankar* system in the District, the Revenue field staff prepared a land schedule for the entire *jagir* lands held by *Jhankar* and *Chowkidari*. This action was however protested by *Jhankars* and after the protest 50% of the land was indeed settled and the remaining 50% of land was reserved in the name of *Jhankars* in consideration of worship performed by them. In many cases where the recorded *Jhankar* is not performing the worship, the District authorities have recorded *Jhankri* lands in the name of the respective deity with a mention of the present priest in the remarks column!

In Junanibahal the *Jhankar* lands recorded in the name of Kashi Dharua were settled during the last settlement in the 1960s after the notification for abolition of the *Jhankar* system. Around 27 acres of *Jhankri* land was in the village in the name of Kashi Dharua, although this *Jhankri* land was occupied by another member of a *Jhankri* family resulting in a conflicting situation. Cases were registered and it was alleged that the occupying family had done so at the insistence of the *Gaontia* family. Both the parties were asked to appear before the court. Meanwhile the descendants of Kashi Dharua, namely Gangadhar Dharua (staying presently in the village as a

landless person), had left for a few years in search of work. During the last settlement some influential members of the Gaontia family (both from Junanibahal as well as Karlamal) suggested that the land be distributed among the landless. Thus these lands were settled in the name of landless as well as landed families of Karlamal and Junanibahal.

Later however the *Gaontia* families occupied many of these lands, and presently the descendents of Kashi Dharua, Gangadhar and his brother Harilal, remain landless. This process illustrates how the Gaontia families have exploited the 'reforms' process to consolidate their landholdings.

Table 23: Actual Status of Jhankri Land

Name of the beneficiary	Village	Amount (acres)	Original patta holder
Bragaraj Sahoo	Junanibahal	2	Kashi Dharua
Bisnu Hota	Karlamal	2	Kashi Dharua
Ratan bagh	Karlamal	2	Kashi Dharua
Kanthamani nag	Karlamal	2	Kashi Dharua
Govinda Nag	-	2	Kashi Dharua
Khuru Nial	Karlamal	2	Kashi Dharua
Paban Majhi	Karlamal	2	Kashi Dharua
Nialu Bag	Karlamal	2	Kashi Dharua
Makaru Patel	Karlamal	2	Kashi Dharua
Bhja Bharia	Karlamal	2	Kashi Dharua

Status of Bhogra Land

The village headman or *Gaontia* was responsible for collecting revenue from villagers and paying it to the rulers of Patna State through *Umras* (another layer of intermediaries). He was remunerated by a land grant called *Bhogra* land, which was rent free. The village headman had no proprietary right in the village. After enactment of the Patna State Land Revenue Act, 1940, the remuneration paid to these headmen was fixed at 20 percent of the gross assets of their respective village. But the *bhogra* lands in their possession were valued at ordinary rayati (tenant) rates and belonged to the state.

Table 24: Actual Status of Bhogra / Jagri Land

Original Patta Holder	Present Descendents	Land settled (acres)	Kism of land under occupation of Sukhbasis (acres)	
			Bahal	Aat
Tula Bhoi	Fakira Dharua	0.80	0.40	0.08
Kama Dharua	Kailash Dharua	0.80	0.20	0.15
Moila Dharua	Ramancha Dharua	0.80	0.08	0.15
Janki Mahanand	Janki Mahanand	0.80	0.40	0.08
Jogindra Dharua	Jogindra Dharua	0.80	0.08	0.20
Total		4.00	1.16	0.66

Around 5 acres of land had been demarcated as *bhogra* land. The best quality paddy used to be grown there by the *Gaontia* family for the officials of Raj Darbar, and other villagers also used to provide their labour for cultivation in these lands earlier. After independence these land became known as *Jagri Zami*. Through the distribution of ‘ceiling surplus’ land during land reform process, these lands were also distributed among the landless *Sukhbasis* of the village.

But despite the fact that, on paper, 0.8 acres of Bhogra / Jagri land was given to each *Sukhbasis* family, few have actually been able to assume ownership of the entire land. The *Sukhbasis* allege that part of the lands settled in their name remain under the control of *Gaontia* families because most of the *Bhogra / Jagri* lands were adjacent to *Gaontia* families’ lands, who often did not give their consent for *Sukhbasis* to access them.

Status of ‘Ceiling Surplus’ Land

The ‘ceiling surplus’ land of *Gaontia* families was officially distributed among the landless of Junanibahal, Karlamal and Bagjharan village in 1978. However, again the majority of distributed lands settled with the landless families have been informally occupied by *Gaontia* families. After the *Sukhbasis* had been cultivating the land for some time (about 5-6 years) they were ousted by *Gaontias*. Although the *Gaontias* themselves are not in the majority of cases cultivating on ceiling surplus land, they let out these lands to others (outsiders as well as *Sukhbasis*) on the basis of payment and share cropping, and some of the land has been leased by *Gaontias* to outsiders for cotton cultivation.

Table 25: Details of 'Ceiling Surplus' Land Occupation

Beneficiary of 'ceiling surplus' land distribution	Amount (acres)	Village	Present occupier of land
Moila Dharua	1.10	Junanibahal	Gaontia family
Gangadhar Dharua	1.00	Junanibahal	Gaontia family
Harilal Dharua	1.00	Junanibahal	Purna Bhoi, Duryo-dhan Bhoi, Balla Bhoi
Kama Dharua	1.00	Junanibahal	Gaontia family
Jogindra Dharua	1.10	Junanibahal	Gaontia family
Tula Bhoi	1.20	Junanibahal	Gaontia family
Padmolochan Dharua	1.10	Junanibahal	Gaontia family
Janaki Mahanand	1.10	Junanibahal	Gaontia family
Kirtan Kumhar	1.40	Karlamal	Gaontia family
Bhuku Kumhar	1.20	Karlamal	Gaontia family
Natha nanga	1.10	Karlamal	Gaontia family
Kali Nag (SC)	1.20	Bagjharan	Gaontia family
Darkaputa	1.10	Bagjharan	Gaontia family
Pudu Mahar	1.00	Bagjharan	Gaontia family
Parne Suna	1.00	Bagjharan	Gaontia family
Pudu Suna	1.00	Bagjharan	Gaontia family
Murali Nag (SC)	1.20	Bagjharan	Gaontia family

7.2.3. Impact of Eviction of Sukhbasis from Ceiling Surplus Land of forests

The dependence of *Sukhbasis* on forest produce has increased after loss of their ceiling surplus land (see individual case study of livelihood analysis below). The eviction of *Sukhbasis* from their land gave rise to much conflict within the community over the decade 1975-1985, conflicts which had serious implication for the access of various groups to forest resources. Reports of felling of timber for household use were filed with the Forest Department by villagers against each other, leading to severe harassment by the Forestry personnel. Some *Sukhbasi* families who were cultivating land in the *Gochar* (grazing land) forest were prevented from cultivation. Forest resources rapidly depleted during that time as people from nearby villages cut and removed valuable timbers from the *Gochar* forest due to the lack of unity within the community.

7.3. Forest Resources in Junanibahal

Gandhamardan Reserved Forest was declared as a Reserved Forest in 1907 during the administration of the Patna Ex-state. Butel Reserved Forest was a part of Gandhamardan Reserved Forest and was separately demarcated as a Reserved Forest in 1936. According to senior village members there was no conflict during the declaration of the Reserved Forest as there was no restriction in NTFP collection for personal use from the Reserved Forest during the administration of the Patna estate. A separate license used to be given earlier for cutting certain trees of specified girth

and bamboos for a certain time. A '*kharchari* tax' for grazing used to be levied, although villagers stopped paying this tax ten years ago.

As mentioned above, forest resources formed a major part of the livelihood resource base for the villagers of Junanibahal. The whole village was dependent on forest for meeting livelihood needs, although this dependence was greater in the case of landless families.

The main forest area of the village comprised of the so called "*Gochar* forest" and the adjacent village forest. During the Revision Settlement of 1932-37, part of the area which has forests was classified as "*gochar*" (grazing land), and since that time this patch is known as the *Gochar* forest. This forest, located adjacent to the Reserved Forest, has witnessed many serious conflicts as well as conservation initiatives.

Box 9: Timeline of forest-related events in Juani Bahal (from village focus group discussions)

1920s	The area was fully covered with dense forests containing trees of valuable species like <i>Mahul</i> , <i>Char</i> , <i>Harida</i> , <i>Bahada</i> , <i>Amala</i> , <i>Sal</i> .
1930s	A 55 acre part of this stretch of forest was demarcated as <i>Gochar</i> (grazing land) during Land Survey and Settlement of 1932-37. The adjacent Reserved Forest was demarcated again to prevent 'trespassing'.
1940s	Villagers collected timber from B class Reserve Forest by paying Nistar cess. Some areas in <i>Gochar</i> forest cleared for cultivation
1960s	Forests fully dense and abundant
1970s-1980s	Outside villagers from Dhandamunda (11 Km away), Benkara (10 Km away), Banmal and others used to collect firewood from <i>Gochar</i> forest. As outsiders also started exploiting the forest degradation set in. Internal conflicts within the villagers led to intrusion of forest officials and lodging of forest cases, setting the villagers against one another
1980-85	The forest resources were severely affected by internal conflicts amongst villagers and the forest was heavily denuded. Harassment by forest officials increased. Hari and Ghasi Dharua cultivated inside the forest. <i>Gond Samaj</i> , a social movement involving all the Gond tribals of 18 villages, was formed in 1982.
1985-87	Forest protection initiatives started. Meetings were conducted and Harishankar Yuvak Sangha, a youth group, was formed and began educating people on forest protection through <i>Kirtans</i> and local songs. All youths of the village were involved in the process. Janardan Mallik was the first president of the committee.
1987-90:	The interference of Forest Department reduced after forest protection started

1990-2000	The forest protection and management systems helped the villagers to develop self- regulatory mechanisms for households' consumption for meeting daily needs. This stopped villagers from acting as Forest Department witnesses against each other.
2002	Foresters seized logs brought by Purna Gaontia ostensibly for house repairing. One of the villagers had acted as informer

7.3.1. Cultivation on Forest Land in and Around Junanibahal

Many families in this village were cultivating on the *Gochar* forest for the last six decades. The *Gochar* forest is adjacent to the Reserved Forest and the expansion of cultivation which is still continuing is moving into the Reserved Forests. Some of the landless families who had been distributed *Jhankri* land and Ceiling surplus land in Junanibahal and then were later forcibly evicted by the *Gaontia* families are also now cultivating on forest land.

Sapmund village is located around 11 km from Junanibahal and is situated alongside the Gandhamardan and Butel RF. The village has around 30 households, the majority of which are *Gond* and *Kandh* tribes. Around 9-10 *Sukhbasis* families from Junanibahal migrated to Sapmund village in two phases. One batch had migrated to this village after the survey and Settlement of 1932-37. During 1940s another batch of families migrated. Most of the families who migrated to Sapmund village are landless and have been cultivating in forestland, mostly Reserved Forest. Some of the families have been cultivating on forestland for several decades and have no legal rights over these lands.

Some other nearby villages like Bartia-Barpalipada (around 14-15km away) have been located within Gandhamardan RF since the 1960s. This village comprises around 10-12 families most of whom are *Kolha* and *Saora* tribals. None of the residents of this village have patta land and all of them have been cultivating on forestland. These communities have been served notice for eviction by the Forest Department many times to make way for upcoming plantation schemes, and many have also been harassed through legal cases.

7.3.2. Land Alienation Due to the Intervention of the Soil Conservation Department

Initial survey of demarcation for Soil Conservation Department intervention in Junanibahal village was done in 1992. Checkdams were constructed, and subsequently a plantation program was taken up from 1995. The area demarcated for plantation encroached upon the land developed by Ghasi Dharua (*Sukhbasis*) and Harilal Dharua. Another *Sukhbasis* family also lost 1 acre of 'ceiling surplus' land due to plantation. Another person, namely Jadu Bag, also lost the land he had developed due to the plantation program. None of the cultivators received any

compensation for loss of their land to the Soil Conservation Department plantation programme.

7.4. Harilal Dharua: Household Case Study I in Junanibahal Village

Harilal Dharua belongs to one of the poorest *Sukhbasi* families in the village. The major sources of this families' livelihood are agriculture and forest produces. Dispossession of agricultural and forest lands and ensuing conflicts have brought important changes in the livelihood pattern of this family. The family worked as village priest and watchman and hence received a *parcha* of *Jhankri* land. As per the traditional norm Harilal's father Kashi Dharua had received around 27 Acres of *Jhankri* land. However, conflict with the *Gaontia* (Chaturbhuja Gaontia, father of Purna Gaontia) led the *Gaontia* to bring another *Jhankri*, namely Drusti Dharua. Drusti Dharua occupied the *Jhankri* land settled in the name of Harilal's forefather. Earlier Harilal's brother namely Gangadhar Dharua (presently alive and staying with Harilal) used to cultivate part of that land. But forcible occupation by another person over *Jhankri* land led to conflict. Cases were registered in the name of both parties.

Notices were served to both parties to remain present prior to the settlement of 1965-66. However the family of Harilal had left the village in search of work for around 10 years. As neither of the parties turned up during settlement, the lands were settled in the name of landless as well as landed families of Karlamal as per the insistence of *Gaontias* (the *Gaontia* family of Junanibahal and Karlamal appeared to have a good relationship with each other).

After the loss of the *Jhankri* land, the family of Harilal and Gangadhar received ceiling surplus land as landless families. Later these lands were illegally reoccupied by descendents of Chaturbhuja Gaontia namely Purna Bhoi, Balla Bhoi and Duryodhan Bhoi. The descendents of *Gaontia* families reasoned that as these lands belonged to their forefather they had right over these lands.

According to Harilal, his forefathers had cleared a patch of forestland amounting to one acre in Patra Jungle and one acre in *Gochar* Jungle around 1976. The family kept possession over that land for around 10-12 years. Keeping in view the loss of *Jhankri* and Ceiling surplus lands, these lands were extremely important for the livelihood of the family. However he was asked to stop cultivation on forest land in a meeting meant for forest protection (The major decisions for protection used to be taken by *Gaontia* families. Purna Gaontia is currently president of the Community Forest Management Committee). A closer reflection on change in livelihood pattern of the family shows that the dependence on forest produce had gone up after they stopped cultivating on forest land.

Table 26: Livelihood Trend of the Hari Dharua's family

Year	Agriculture	Forest produce	Wage labour	Any Other (e.g. Agric Labour)
1970	0			worked as Halia ⁵⁵
1985	50%	35%		15%
2006	0	30%	50%	20%

The livelihood analysis shows higher dependence on agriculture (e.g. cultivation on forest land) and forest produce during later part of 1980s. However loss of forestland due to forest protection and the plantation scheme of the Soil Conservation Department has forced the family to shift to dependence on wage and agricultural labour.

7.5. Romancha Dharua: Household Case Study II in Junanibahal Village

Romancha Dharua too belongs to one of the poorest *Sukhbasis* families in Junanibahal. Romancha is one among the three sons of Mohila Dharua. This family traditionally depended on agriculture and forest produce as their major source of livelihood. Around 1.16 acres of ceiling surplus land had been distributed in the name of Mohila Dharua, and this was cultivated for around 8-10 years equally between two brothers namely Romancha and Dharamsingh, as the third brother had migrated to another village. The family of Romancha is still paying cess to the Revenue Department. However the land is now occupied by Purna Gaontia's family. Apart from the ceiling surplus land this family had also received *Jagri* land amounting to 0.80 decimals. A decision in the village by the *Gaontias* last year has forced the receiver of *jagri* land to leave these lands fallow. The *Gaontias* claim that *jagri* lands belong to them. Loss of ceiling surplus land and *jagri* land has affected the livelihood of the family quite significantly.

Romancha has been cultivating on the *gochar* forest for the last 15-17 years. He had to vacate the land cleared by him during 1995-97 during the plantation scheme implemented by the Soil Conservation Department. However he subsequently returned to this land and is still cultivating it.

Table 27: Livelihood Trend of Romancha Dharua's Family

Mile stones	Agriculture	Forest produces	Wage labour	Any other (Agri. Labour)
1985	30%	40%	30%	0
2006	0	60%	30%	10%

The livelihood analysis during different times shows that dependence on forest produces as a source of livelihood has increased manifold recently. Apparently loss

⁵⁵ The person who works for a landlord ploughing the whole land and doing all the agricultural work. During the period he cannot take any work independently. He is hired for a season or permanently by the landlord.

of ceiling surplus and Jagri land has increased the dependence of the family on forest produces.

7.6. Summary

The proportion of private land to Govt. land in the village is 75 %, reflecting a much better scenario in comparison to the tribal district of Kandhamal discussed above. However, the land distribution pattern demonstrates very inequitable ownership among social groups with the *Gaontias* owning the majority of land, including the best quality paddy land. The village headman and *Gaontias* have been predominant in all land-related matters and have influenced the course of land survey and settlement and reform processes to extend their dominance and further marginalize the landless *Sukhbasis*.

During the first three decades of 20th Century different families cleared forest patches and occupied land within the village area, some of which were later regularized in their name during land settlement processes at different times. However, the lands cleared by the *Sukhbasis* were not settled in their name during the land settlements. The *Sukhbasis* (landless) have been marginalised during all the settlements, although they were native to the village, and as a result some *Sukhbasi* families moved into the interior forests for cultivation.

The Orissa Land Reforms Act 1960 ostensibly aimed to improve land access of the poor through distribution of *Jhankar* land to the landless families. However at ground level the village power dynamics obstructed this outcome. The ceiling surplus land that was taken away from village headman (*Gaontia*) by the government and distributed among the landless *Sukhbasis* remains under the possession of the *Gaontias*. In some cases, the revenue officials did not even demarcate the land which the landless were allotted. The *Bhogra* land distributed to the *Sukhbasis* in land records likewise remains under the control of *Gaontias*. *Jhankri* land settled in the name of one person is also often being occupied.

The forcible occupation of the landless families' allocated land by the *Gaontias* and village headmen is the major persisting problem in the village as well as in the district. The ceiling surplus land distributed among the landless is presently under illegal occupation of *Gaontias*, who give them for share cropping and leased out to outsiders for cotton cultivation. Interestingly, the lands are also leased out to those *Sukhbasis* in whose name the land is legally recorded under ceiling surplus law.

Conflicts between the *Sukhbasis* and the *Gaontia* had led to disruption of the regulatory mechanism in managing common resources of the village like forests,

forestland etc. The dependence of *Sukhbasis* on forest produces have increased after loss of their ceiling surplus land. Due to scarcity of land the *Sukhbasis* families are cultivating on *gochar* forest and government land are also prevented from doing so by the *Gaontia* families.

Improper classification during the 1936-37 Survey and settlement led to the classification of the forest land as *gochar* (grazing land). This land popularly known as “*gochar* forest” has been under protection of villagers and a high proportion of it has become covered with dense forest.

Forest resources form a major part of livelihood. Villagers collected timber from B class reserve forest by paying *Nistar* cess. Some areas in *Gochar* forest was cleared for cultivation. Internal conflicts within the villagers led to intrusion of forest officials and lodging of forest cases, using the villagers against one another. Harassment by forest officials increased with forest offence cases in the name of villagers. The interference of FD has reduced after forest protection.

Since last 6 decades many families are cultivating on forest land in nearby reserved forest. The landless families who were distributed *Jhankri* and ceiling surplus land, were forcibly evicted by the *Gaontia* families are also doing cultivation on forestland.

Loss of land due to irrigation projects and plantation programmes of the (Soil Conservation Dept) government has also been a problem here. Both the private land and encroached land of long cultivation were taken away, and no compensation given for loss of land due to plantation program. There has also been a loss of household forestland access due to forest protection and the plantation scheme of the Soil Conservation Department, which have forced landless families to shift to dependence on wage earning.

8. Chandanjuri Village Case Study

Chandanjuri village illustrates the social dynamics behind settlement of new areas, population growth, the extension of the agricultural frontier and ‘encroachment’. In the context of the village’s rapid population, social stratification has been reflected in skewed landholding and a failure inland reform measured to redress this.

Chandanjuri Village, surrounded by forests on all sides, comes under Larambha Gram Panchayat of Patnagarh Block and is around 24 Km away from the block headquarters.

The village is currently inhabited by 120 households, comprising similar proportion of families from each of the three social categories 'Other Backward Castes' (OBCs), 'Scheduled Castes' (SCs) and 'Scheduled Tribes' (STs). The 'Other Backward Caste' group have the dominant socio-economic position.

Table 28: Demography of Chandanjuri Village

Caste	Total households	Male	Female	Total
SC	38	70	71	141
ST	35	60	76	136
OBC	47	88	93	181
Total	120	218	240	458

Originally six families moved to the village from nearby Junabasti village (one Goud family, 2 Binjhal families, 2 Harijan families and one Kandh family). They began cultivating the land and paying *malguzari* (tax) to the Raja⁵⁶ of Agalpur.

The population and household numbers grew rapidly: thirty years ago there were around 25 - 30 families in the village, which increased to 45 - 50 by 20 years ago and to 86 by 10 years ago.

The number of households increased partly due to the prevalence of the nuclear family cultural practice, whereby when sons married they formed new households. The population also grew through continuous in-migration, particularly of relatives (daughters and son in laws) from other villages. Most of the in-migrants settled here as they had limited livelihood opportunities in their respective villages. Most of the currently landless are from those who in-migrated.

The major sources of livelihood are cultivation, wage labour and forest produce collection, processing (e.g. basket weaving) and sale. A majority of the households depend upon NTFPs as a major livelihood source due to sufficient availability of wide range of forest products.

Private land comprises 67.09% of the total village land within the revenue boundary, and only 17.37 % is under revenue forest. Of the total non-forest revenue land just 4% is cultivable waste, (which can be directly settled in the name of landless households).

⁵⁶ The Zamendar of Agalpur who was a relative of the Patnagarh was also called Raja of Agalpur.

Table 29: Status of Government Revenue Land in Chandanjuri Village

Category	Non-Forest land (acres)	Forest land (acres)	Total
Private land	583.28	0	583.28
Government Land	135.14	151.02	286.16
<i>Abad Jogya Anabadi (cultivable waste)</i>	5.41	56.71	62.12
<i>Abada Ajogya Anabadi (uncultivable waste)</i>	27.46	0	27.46
<i>Rakhita</i>	87.33	94.31	181.64
<i>Sarbasadharana</i>	14.94	0	14.94
Grand Total	718.42	151.02	869.44

The OBCs have the major landholding share in the village, whereas 40% of the SC households are landless and rest of them are marginal farmers.

Table 30: Category-wise ownership of Land in Chandanjuri Village

Household land-holding size	SC	ST	OBC	Total
Large	0	3	7	10
Small	2	10	13	25
Marginal	21	14	19	54
Landless	15	8	8	31
Total	38	35	47	120

Thirty one families are landless in total, of which SC households constitute almost half. The majority of the population in Chandanjuri village are partially dependent on non-timber forest products (NTFPs) for their livelihood, and for these landless households dependency is particularly high. A wide range of forest products (like mahua flower and seed, kendu leaf, sal leaf and seed, kusum seed and palm seed) are abundantly available in the local areas. Table 30 below illustrates the quantities of the main products extracted.

Table 31: Seasonal availability of NTFPs

Name of the product	Time of availability	Quantity extracted by the villagers (Quintals)
Bahara	February to July	230
Mahua	January to May	150
Kendu	February to July	150
Siali Leaf	All season	70
Mahua Seed	May to July	50
Harida	November	50
Mango	May	45
Tendu Leaf	May - June	30
Jamun	July	15
Chiranj	April	10
Amla	January and February	5
Lak	All season	1

8.1. Distribution of Ceiling Surplus land

The most important factor cited for the in-migration to the village has been the availability of ceiling surplus land at a relatively low price. Despite around 133 acres of ceiling surplus land has been distributed so far, there remain 31 landless and 54 marginal households in the village. This is because much of the distributed land has gone to outsider households belonging to general castes (which violates the provision of OLR Act 1960). Most in-migrants have purchased land, apart from the relatives of scheduled castes, who are mainly involved in making bamboo baskets (*Dola*) as their livelihoods.

8.2. Encroachment of Government Land and Forest Land

Almost all the village households have 'encroached' both government and forest land in the village. Areas encroached by the households vary from 1 to 5 acres. The villagers claimed that their forefathers had been cultivating those lands for a long time, although the households' area encroached roughly correlates with the year of families' in-migration: families who moved in more recently having less encroachment. As the *Gochar* land is located adjacent to private plots, people having private land around those lands have encroached onto it. Most of the villagers have been paying fines for the encroached land to the Revenue Department, but are not desisting.

8.3. Social Forestry and Alienation of Encroached Land

However the Forest Department's 'Social Forestry' project, implemented in the village between 1983 and 95, has been a major cause of land alienation. Most of the families had been cultivating to some extent on the village forest and *patra* jungle areas of Budharaja *dongar* located in the South-west portion of the village for several generations. The area was preferred because many perennial streams flowed through this region. This area was specifically chosen by Forest Department's for the project plantation site, presumably to 'reclaim' it and bring it under their territorial control.

Under the plantation programme total area of 31.5 acres of land (cultivated by 10 families) was 'lost' to the Forest Department. Whilst five households were granted compensatory usufruct right over land adjacent to the area (i.e. rights to use the forest produce without rights on the land), the rest were forcibly evicted. The evicted people had conflictual relations with the local forest officials but eventually the forest department prevailed and took effective control of these lands.

Table 32: Loss of Land through Plantation under Social Forestry Scheme

Household	Village	Area cultivated earlier (acres)	Cultivated Since	Present status	Area given as usufruct right (acres)
1	Chandanjuri	6.0	1940s	Plantation	2
2	Bhamnipalli	5.0	1940s	Plantation	2
3	Bhamnipalli	3.0	1940s	Plantation	2
4	Chandanjuri	2.0	1940s	Plantation	0
5	Bhamnipalli	5.0	1940s	Plantation	2
6	Bhamnipalli	6.0	1940s	Plantation	2
7	Chandanjuri	2.0	1940s	Plantation	0
8	Chandanjuri	1.0	1940s	Plantation	0
9	Chandanjuri	0.5	1940s	Plantation	0
10	Chandanjuri	1.0	1940s	Plantation	0
Total		31.5			10

8.4. Summary

Overall this case study illustrates the complex social processes behind the extension of the agricultural frontier, the ways that the pro-poor aims of land reform are subverted, and the negative impacts that schemes like Social Forestry have had.

9. Summing up the Bolangir District experience

The dynamics of land and forests are very different in the agrarian Balangir district, and contrast with the Kandhamal example. The issues mostly revolve around competition for land and land access within an inequitable agrarian structure shaped by a feudal history and an inequitable land tenure system. This in turn has been stabilized due to a longer and repeated processes of Survey and Settlements. The structural agrarian inequities have not been addressed by the post independence land reforms and remain a major cause of conflicts within local communities, especially between the large landowners and marginal farmers or agricultural labourers. This is illustrated by the Junanibahal case study. Forests, cultivation on forest land and even community forest protection have become a part of the local power dynamics, with hidden and unanticipated outcomes.

Most of the forest reservation process in Bolangir was carried out before independence. Almost all RFs in Bolangir at present are *deemed* Reserved Forests which had been originally declared under the Patna State Forest Rules. It is not clear whether the proper legal procedures for settling rights were carried out before reservation. Large areas of forests outside the Reserves were allowed to be converted for agriculture after permission from the local *Gaontia* households.

Much of the forest area, especially in the plains, was cleared in the post-independence period for agriculture and other land use. The massive deforestation in the three decades after independence led to scarcity of forest products. However, forest products such as Kendu leaves, mahul flowers and seeds still form an important part of rural livelihoods, especially for the landless. For this reason large numbers of community forest protection initiatives were started since 1970.

Current forest tenure issues primarily relate to regularisation of encroachment on forest land, conflicts within communities over access to forest land and forests, and community rights and access over forests. Cultivation on forest land is common in many of the plain forests as illustrated by both the Junanibahal and Chandanjuri case studies. The actual level of cultivation on revenue forests land is higher than in the State record, which has led to regular conflicts between FD and local communities. Much of this encroachment was done many decades ago in the period when it was accepted practice to open forests for agriculture. Such lands were eligible for settlement with the cultivators as per the existing forest laws and land laws, although this was not done. The Forest Conservation Act, 1980 completely changed the situation, and these areas became frozen as forests, leading to constant conflicts and problems with the Forest Department. This is one of the most critical problems related to forest tenure in the district.

Three major issues stand out in the Bolangir cases. Firstly, one of the key reasons for the inequitable distribution of land and resultant conflicts arises from poor implementation of survey and settlement and the land reforms processes. Many poor cultivators lost the right to their land during the first post independence survey and settlement when their land was recorded in the name of powerful households. The deliberate distribution of ceiling surplus land in Chandanjuri to general caste people belonging to neighbouring villages by ignoring the landless SCs and STs families of Chandanjuri is an example of how implementation of land reforms were carried out in violation of the legislation.

Secondly, the official figures for forest land cultivation are a massive underestimate, and much of the 'encroachment' on forest land is historically established and should have been eligible for regularisation in the cultivators' name. This hasn't happened to date, although the Forest Rights Act 2006 gives some hope that it may be resolved in favour of the cultivators.

Thirdly, it becomes clear from both the case studies that plantations for social forestry or soil conservation have been used as a state strategy to evict cultivators from forest land. Often the powerful people in the villages have used these opportunities to remove poor from accessing such lands. In case of Junanibahal, even community forest protection has been used to deny land access to the poor. This makes it clear that any strategy which relies on plantations and afforestation must necessarily evaluate the existing use and access of land and its impact on the existing land users including cultivators.

Section IV: Conclusions and Policy Recommendations

The two District reviews and four village case studies presented in this study have illustrated the complex issues livelihood use of forests, forest tenures and land administration systems in Orissa. This section summarises our findings and gives a number of recommendations in order to address the problems.

9.1. Conclusions

The main issues emerging in the case studies can be categorized as follows:

Table 33: Key Forest Tenure Issues Emerging From Case Studies

Issue	Where Observed			
	Kandhamal		Bolangir	
	Pakari	Mandaguda	Junanibahal	Chandanjuri
1. Non-recognition of customary shifting cultivation and conversion of land into state Reserved Forest	✓	✓		
2. Pre-existing settlements in land categorized as Forest Land	✓	✓		
3. Permanent cultivation wrongly classified as forest land during forest reservation	✓			
4. Shifting cultivation areas inside village boundaries categorized as Revenue Forests through Survey & Settlement	✓	✓		
5. Existing permanent cultivation categorized as Revenue Forests during Survey & Settlement	✓	✓		
6. Extension of cultivation into Reserved Forests and Revenue Forests before 1980 and its non-regularization	✓	✓	✓	✓
7. Recent extension of cultivation in forest land	✓	✓	✓	✓
8. Community forest protection as a claim on forest land		✓		
9. Exclusion of marginalized from land ownership and use of forests by the powerful through community forest management			✓	

There is indeed an even wider range of forest tenure deprivation issues across Orissa, although the scope of this study was constrained by having to select study sites within a wider study of forest management. Because of this some typologies of tenurial issues related to forest land have been missed out, including for instance issues related to: Protected Areas (Wild Life Sanctuaries), displaced persons settled in forest land, and Reserved Land. However, it speaks for the ubiquity of the problems related to the construction of legal forests in Orissa that even in a small sample of four villages in just two districts, such a variety of problems regarding forestland emerged.

The above issues from the case study villages can be summarised into these main categories:

1. Non-recognition of rights on shifting cultivation areas and conversion of such land as Forest Land
2. Poor settlement of rights during forest creation
3. Non-regularization of cultivation on forest land
4. Low availability of non-forest land and extension of agriculture into forests
5. Local politics of exclusion over land and forests

Within these typologies, attempt is made contextualize them in terms of National and State laws and policies.

9.1.1. Non-Recognition of Rights on Shifting Cultivation Areas and their Categorization as Forest Land

Among all Indian States, Orissa has historically had the largest area under shifting cultivation, and shifting cultivation has been both the most important source of food and subsistence for many of Orissa's tribal communities and also a central aspect of their material culture.

Estimates of the area under shifting cultivation in Orissa have ranged from 5,298 sq. km. to 37,000 sq. km. The Forest Enquiry Committee Report of 1959 mentioned that 12,000 sq. miles (almost 30,720 sq. km.) of land in Orissa were under shifting cultivation (GoO, 1959), almost 20% of the area of the state⁵⁷. As per another report of the Forest Department, 31,237.9 sq. km. of forests are affected, in varying degrees, by shifting cultivation⁵⁸ (Kumar et al. 2005).

The state's process of Forest reservation and notification in shifting cultivation areas has been a constant source of tension and conflict. Section 10 of the Indian Forest

⁵⁷ District Gazetteers, Partially Excluded Area Enquiry Committee Report, Ramdhyan's Report on Land Tenure and the Revenue Systems, Survey and Settlement Reports and many other sources document the extensive practice of shifting cultivation in the tribal areas.

⁵⁸ Government of Orissa (1994), A Decade of Forestry in Orissa 1981-1990. Bhubaneswar . Principal Chief Conservator of Forests, Orissa.

Act, 1927, dismisses the rights of shifting cultivators during declaration of Reserved Forests, providing only that the forest settlement processes should keep aside some area for shifting cultivation (Kumar 2004). Vast areas that were used as forest fallows for shifting cultivation by the tribal communities (in the districts of Kandhamal, Gajapati, Rayagada, Koraput, Malkangiri, Juangpirh and Bhuyanpirh of Keonjhar and Sundergarh) have thereby been declared as Reserved Forests or as Proposed Reserved Forests, or as other categories of forests, criminalizing shifting cultivation on these lands.

The renowned anthropologist Verrier Elwin pointed out that that in 1930s-40s, Kandh Villagers were approached by Forest Guards who had orders to demarcate "Reserved Forests", and how in almost every case the Forest Guards demanded bribes, and if the villagers refused to pay, he designated forest fallows which the Kandhs habitually used for shifting cultivation as Reserves (Padel 1995).

Nearly all Working Plans in the shifting cultivation areas have identified it as the most important reason for forest degradation and often used terms like "evil" or "pernicious" for shifting cultivation, and are full of strategies to counter it. There was little appreciation of or concern for the livelihood dependence of the scheduled tribes on shifting cultivation, and the fact that much of the areas that the Department wanted to convert to forest were in effect traditional swidden area.

The Working Plans of the forest divisions in shifting cultivation areas illustrate the extent to which shifting cultivation areas were sought to be converted to forests and plantations. Consider for instance working circles in Rayagada Forest Division's Working Plan:

Table 34: Shifting Cultivation and Rayagada Division Working Plan prescriptions

Working Circle	Area (ha)	Area affected by <i>podu</i>	Remarks
Improvement	41,526	Part of the circle	'All the blocks having congested crops at pole stage mainly of <i>podu</i> origin were included in this circle'
Rehabilitation-cum-soil conservation	27,768	Part of the circle	'It included <i>podu</i> areas thoroughly degraded due to repeated hacking'
Teak Plantation	2,507	2,288ha	' <i>Podu</i> areas and existing teak plantations'
Protection	987	Half of Rafukona RF (647 ha)	-

Source: Rayagada Division Working Plan,

Both Mandaguda and Pakari in Kandhamal district had extensive shifting cultivation patches on the areas now declared as Reserved Forests. A combination of coercion by the forest Department through cases, fines and harassment (please refer to section 3.6

Chapter III and box no 1) and availability of alternative livelihoods through turmeric cultivation and increased wage employment has led to almost a stop in shifting cultivation in these two villages. The extent of coercive steps taken to stop shifting cultivation is evident by the fact that out of 87 cases referred to Court under OFA, 1972, in the G Udaygiri Range⁵⁹ of Phulbani Forest division since 2001, the Forest department, as many as 47 was for carrying out shifting cultivation.

A trend of reduction and stopping of shifting cultivation is observable in most villages in eastern part of Kandhamal district. However, in the South Western part of Kandhamal district (consisting of mainly Balliguda Tahasil), shifting cultivation is still extensively practiced, including in the Reserved Forests, Proposed Reserved Forests and the Kotgarh Sanctuary. It requires a deeper study to understand this difference between the two parts of Kandhamal district, but villages in Balliguda Tahasil seem to be generally more remote and less alternatives available. Another factor has been the increasing influx of non-tribals into this area, who are pushing the tribals further back into the forests. Bolangir seems to have no shifting cultivation except in parts of Chattardandi RF on a very small scale. More than the criminalization of shifting cultivation itself, the non-recognition of rights on these customarily claimed land and their conversion to forest category has led to major problems for tribals. The declaration of such lands as Reserved Forests and Proposed Reserved Forests has created running battles between the Forest Department and the tribals, with the FD using its extensive legal powers to force the tribals to stop shifting cultivation.

9.1.2. Shifting Cultivation on Revenue Forests:

During the Revenue Survey and Settlements, much of the shifting cultivation lands on hill slopes which were within the village boundaries were categorized as Government land. For example, in undivided Koraput, during the first Survey and Settlements (1938-1964), the Board of Revenue ruled that since shifting cultivators are not in continuous possession of land for 12 years, they can't be treated as ryots as per Madras Estate Land Act, 1908, and therefore these lands were not to be settled in their names (Behuria 1965). Much of these areas are now declared as Reserved Forests or classified as "Revenue Forests".

In both Mandaguda and Pakari villages of Kandhamal district, part of the shifting cultivation fallows were included within the village boundaries and classified as either Gramya Jungle (Village Forest) or as Sal Jungle sub-category in the category (Tables no. 15 and Chapter III). In most of these lands, shifting cultivation is not being practiced at present due to the large number of cases filed against those clearing forest land for cultivation. In Gaurigaon, which lies in Kotgarh area where

⁵⁹ The village Mandaguda comes under G Udaygiri Forest Range

shifting cultivation is still practiced, as much as 60 acres of land categorized as revenue forests are currently under shifting cultivation.

Legally, villagers have little or no rights on these lands as per both forest laws and revenue laws. They have no say in management or transfer of these lands to anyone by the Revenue Department – ironically the only check against transfer of these lands by the Revenue Department is the same Forest Conservation Act, 1980, which also doesn't allow the lands to be settled with cultivators. In many shifting cultivation areas, Revenue Forests that were being used for shifting cultivation have been taken up for plantations by the Forest Department, evicting the tribals from their traditional shifting cultivation land. This is becoming more and more common as funds for taking up forestry and other plantations (ironically ostensibly for the development of tribals) under various development programs such as Watershed Development.

9.1.3. Improper Rights Settlement Process during Forest Creation

The example of Baghnadi Reserve forest shows the problems with the manner in which demarcation and reservation of forests have been carried. Such problems seem to have occurred in almost all areas of Orissa before independence, including the British ruled areas⁶⁰ and the princely states, and even after independence as illustrated in the case of Baghnadi RF in Kandhamal.

⁶⁰ For instance, in the government estate of Khurda (now in Puri district) many areas were declared as 'forest land' though they had no forests:

"In Khurda, there are in all 461 sq. miles of land recorded as forest. Of this area 117 sq. miles constitute the RFs, 91 sq. miles the Demarcated Protected Forests and 253 sq. miles a further aggregate tract known as the Undemarcated Protected Forests. The last category which includes roads, ponds, rivers and even a part of the Chilika lake, has, it is interesting to note, an euphoric name given to it, and merely serves to create an exaggerated idea of the total extent of the forests available in the Estate. A vast area of it is simply barren waste land without any trace of forest." (Govt of Orissa, Khurda Forest Enquiry Committee Report, para 15, 1938 quoted in Rath, 2005).

Statement of Bidhyadhar Gupta S/O Krishnan Gupta, aged 60 years of Gochapada on S/A. (19)

I am the Mutha Sardar of this area. I have seen Baghnadi Reserve Forest boundary line. It goes on a fairly high land on the hill. There is sufficient unreserved land. The Khonds and other villagers bring their requirements of timber, firewood and bamboos for their domestic use from the reserves and unreserves. We also graze cattle in both reserves and unreserves. They bring brooms, fruits, roots and leaves, fiber, thatch etc. from the reserves and unreserves. We also graze cattle in both reserves and unreserves.

28/1/62.

No objection in large & settled area. 28/1/62.

Statement of Bidhyadhar Gupta, S/O Krishnan Gupta age 60 of Gochapada

I am the Mutha sardar of this area. I have seen Baghnadi Reserve Forest Boundary. It goes on a fairly high level on the Hill. There are sufficient unreserved left. The Khonds and others bring their requirements of timber, firewood and bamboos for their domestic use from the reserves as well as the unreserves. They bring brooms, fruits, roots and leaves, fiber, thatch etc. from the reserves and unreserves. We also graze cattle in both reserves and unreserves.

Signature in Oriya
(of Bidhyadhar Gupta)

Read out and explained in Oriya
(Sign)
Dated 23/1/1962

A petition filed by local Mutha Sardar during the Reservation of Baghnadi RF. It is impossible to imagine that the Mutha Sardar who was responsible for Plough Tax collection couldn't have been aware of thirty villages which were included in the Baghnadi RF. The only conclusion that can be drawn that he was not clearly explained the boundaries and area of the RF.

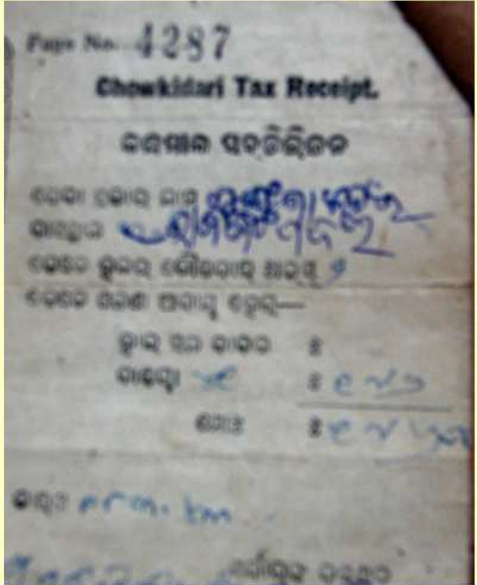
Document 1: Statement of Bidhyadar Gupta

The tenancy rights (formal or customary) of the local inhabitants living inside these reserve forests were sometimes not recorded, and while going through the process of forest reservation, the authorities often included the cultivated land and villages within reserved forest boundaries as in many areas the villagers had no "legal rights". In many forest rich tribal areas such as Kandhamal, Koraput or Gajapati, the processes of forest demarcation and reservation often preceded that of the creation of formal recorded rights in land through Survey & Settlement. In absence of recorded rights of land, it was the often the discretion of Forest Department personnel to include remote settled habitations inside the boundary of proposed Reserved Forests. Only if the Forest Settlement Officer was diligent and inquired carefully about all habitations within the RFs, then such settlements could be excluded from the proposed Reserved Forests. Many times the proposals submitted by the Forest Departments were simply approved without detailed investigations. Baghnadi RF is an example of this laxity.

In many cases, the procedure of rights settlement during reservation has been followed on paper, but due to lack of literacy of the tribal people and their inability to negotiate the procedures, their rights have not been recorded. For instance, under section 6 and 7 of the Indian Forest Act, 1927, a detailed investigation of the rights of tenants is to be taken up and the local people can submit objections. In the case of reservation of forests in Kandhamal district, we found that in many cases objections

hadn't been filed or if they were filed, they were in English with only the thumb impression or Oriya signature of the tribals or other local people. In most cases they just stated that they had no objections to the forest reservations. The format, handwriting and the language strongly indicate that these 'non-objections' were actually fraudulently prepared by the government officials and the signature of the local people obtained in bad faith. Thus even in the case of Baghnadi forest, there are petitions in English by local people saying that they have no objection to the declaration of Baghnadi RF, even though there were thirty existing settlements inside the forest. The evidence clearly implies that the local people were misled by the public servants. The petition shown in the picture as above is from the local Mutha Sardar who was responsible for collection of the plough tax before independence, which was being collected in the thirty villages included inside the Baghnadi Reserve Forests. It is preposterous to claim that the petition was signed after a correct explanation that the boundary of the Baghnadi RF included these thirty villages. One can only infer that the Mutha Sardar was tricked into signing a petition which he didn't understand. In contrast, for some reserve forests, objections were filed in Oriya language strongly protesting the creation of reserve forests.

That settled cultivation areas fell through the cracks and became part of the Reserved Forests is also illustrated by the case of Jarakelka in Pakari village. In spite of the fact that Plough tax was being paid for the Jarakelka patch, this area was included in the Reserved Forest in 1968. It was not included in the thirty villages that were taken out of the Baghnadi RF in 1982 and still continues to be included inside the Reserve Forest. There are many other cases like this where the cultivators even have legal proof of cultivating land which was included inside the RF. The picture below shows the Chowkidari Plough tax receipt from 1943 in name of Gunguna Kanhar whose descendents still cultivate land in Rajingpadar settlement inside the Baghnadi RF.

	<p>Page no. 4287 Chowkidari Tax Receipt Kandhamal Sub-division</p> <p>Name of the Tenant: Gunguna Kanhara</p> <p>Place of Residence: Rajingpadar</p> <p>No of Chowkidari plough tax paid: 2</p> <p>Amount of tax collected for:</p> <p>Current year :.....</p> <p>Outstanding (5): Rs.1.96</p> <p>Total: Rs. 1.96</p> <p><i>Sashi Nath</i></p> <p>Signature of the Sardar</p> <p>Dated: 18.03.1943</p>
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Document 2: Chowkidari Tax Receipt

9.1.4. Non-Regularization of Cultivation on Forest Land

Before the advent of the FCA, 1980, forest lands under cultivation were eligible for regularization under various land laws of Orissa including Orissa Government land Settlement Act, 1962 and Orissa Prevention of Land Encroachment Act, 1972. As discussed above, settlements and cultivation were wrongfully included inside the reserved and other categories of forests. Apart from that, vast areas of forests were brought under cultivation during the first thirty years after independence, including in officially sponsored projects such as the Dandakaranya Project⁶¹. The policies during these periods promoted conversion of forests to agriculture through programs such as “Grow More Food”. Before 1980, Survey and Settlements processes also allowed for the settlement of forest lands to cultivators in accordance with the revenue laws of the State.

The Revenue administration was also empowered to settle forest lands to cultivators under various laws and a permissive environment for cultivating forest land, especially non-reserved forests prevailed. In 1972, after the passage of the Orissa Prevention of Land Encroachment Act, a decision by the Government to settle the rights of cultivators on forest land was taken, wherein the encroached forest areas by tribals, harijans and landless persons would be released for settlement in their names. The State Govt. brought in a resolution in 1972⁶², to release these forest lands for

⁶¹ Over one hundred thousand acres of prime sal forests in Malkangiri and Nowrangpur districts were felled and cleared to settle refugees of East Pakistan under the Dandakaranya Project.

⁶² Resolution no. 32823GE (GL)- 69/72-R dated 10th June 1972 of State Government of Orissa

settlement of rights⁶³. However, the survey of those areas as planned could not be carried out fully even after extensions till 1975. The statistics concerning 11 districts (out of the total 13 in Orissa at that time) showed that a total area of 0.276 million acres of forestland was under cultivation.

Identification and settlement of such forest land with the cultivators couldn't be completed till 1980 when Forest Conservation Act, 1980 was passed, effectively freezing the process of regularization of cultivation on forest land. This left large patches of permanent cultivation in forest area unregularised.

In 1990, MOEF, GOI, issued orders which provided guidelines for regularization of eligible forest encroachments. Based on these guidelines, a Government of Orissa letter along with the Guidelines were sent to all District Collectors asking for regularization of eligible forest lands encroached before 1980. It seems that proposals were sent by the district administrations to the State Government for forest regularizations at that time but these were not followed up (see Table 34 below).

In 2000, the Govt. of Orissa submitted a proposal to the Ministry of Environment and Forests for regularizing 4,429 ha of forest area for cultivation. This proposal was a follow up of the Chief Minister's announcement that all eligible encroachments in forest land shall be regularized. Only those encroachments where forest cases for encroachments were filed before 1980 were officially eligible. However, this proposal completely underestimated the actual area which should have been eligible for regularization even under the strict 1990 guidelines.

This proposal was accepted by the GoI and the Supreme Court in 2006, with a provision that an additional 42,000 ha which was shown as non-eligible encroachments be immediately evicted⁶⁴. This was not possible, and therefore the settlement of rights for even these 4,429 ha hasn't been carried out. The figure of 4,429 ha is a massive underestimation of the ground situation.

In Kandhamal district the total proposed area submitted for regularization was only around 400 ha in twenty villages which were either forest villages or villages which had been unsurveyed. Within the proposal no cultivation in revenue forests have been included, even though in 1994, a separate proposal for regularization of cultivation and homestead sites in Revenue forests for a total area of 735 ha had been submitted which was never regularised. The cases of forest cultivation such as in Pakari village on revenue land or in Jarakelka (on Baghnadi RF) or in Rajingpadar also aren't included in the list of twenty villages.

⁶³ A household with less than one standard acre of land is treated as landless as per OPLE, 1972.

⁶⁴ Supreme Court has given orders dated 13.11.2000 restraining de-reservation of forests till further orders and another order dated 23.11.2001 restraining regularization of encroachment on forest land till further orders.

Table 35: Information Sheet on Proposal Sent to Govt. of India for Regularisation of Pre-1980 Encroachment

No.	District	No. of pre 1980 'encroached' villages / forest villages	Area in Ha. To be regularised	Families to be benefited	Area for C.A. in Ha.	Cost of C.A (in Rs.)
1	Sonepur	5	5.03	180	6.00	152,800
2	Angul (F.V)	2	226.32	130	234.53	4,660,575
3	Angul	5	4.67	96	-	-
4	Boudh	4	87.95	74	87.95	4,122,130
5	Rayagada	13	14.34	223	14.34	390,180
6	Nawarangpur	21	679.61	504	680.04	12,803,000
7	Sundergarh	10	296.12	264	297.20	8,495,000
8	Kalahandi (F.V)	3	359.00	96	359.00	5,126,000
9	Kalahandi	26	416.15	264	416.15	5,324,000
10	Gajapati	30	183.28	270	253.29	4,541,057
11	Khurda	3	74.12	54	93.12	805,000
12	Dhenkanal	11	214.11	214	214.11	5,010,000
13	Jajpur	10	385.53	566	385.55	8,867,190
14	Cuttack	5	65.24	133	66.00	1,510,000
15	Kandhamal	20	438.32	265	430.00	5,466,000
16	Koraput	25	446.99	511	447.00	6,391,936
17	Ganjam	32	504.56	505	504.99	11,029,668
18	Nayagarh	3	29.32	144	29.80	577,620
19	Mayurbhanj	4	10.67	95	18.00	180,000
20	Bargarh	1	0.08	5	-	-
21	Bargarh (F.V)	3	172.61	141	220.00	2,220,000
22	Sambalpur	6	2.75	16	5.50	39,204
23	Jharsuguda	11	52.36	293	67.26	1,188,306
24	Deogarh	2	45.39	43	46.23	933,903
25	Nuapada	8	14.55	27	15.06	301,260
	TOTAL	263	4,729.08	5,113	4,891.13	90,134,829

A similar situation seems to be common in other districts and the example of Nowrangpur has been illustrated in the table below.

Table 36: Discrepancies between data submitted on encroachments by GoO to Supreme Court and MoEF, GOI and data from different government documents

Data submitted by GOO to MOEF / Supreme Court on forest encroachments	Data from other official sources
42,605 ha in the whole of Orissa (Both pre 1980 and post 1980 encroachments) ⁶⁵ .	<ul style="list-style-type: none"> - in Nowrangpur Forest division, 35,000 ha of forestland are under settled cultivation in contrast to the figure of 18129 hectares reported by the GOO in the data submitted to MOEF (Nowrangpur Working Plan, 1999-2009) - in 1998, 46,126 ha of forest lands were estimated to be under encroachment in Nowrangpur Division alone (cited in various official Forest Department documents)
Pre-1980 encroachments for the whole state submitted for regularization by the GOO : 4,729 ha for 5,113 families ⁶⁶	<ul style="list-style-type: none"> - 23,039.45 hectares as pre-1980 encroachments (Nowrangpur Working Plan, 1999-2009) - Pre-1980's claims collected from a small part of forested areas of Orissa for only settled cultivation add up to approximately 20,000 ha.⁶⁷ (Campaign for Survival and Dignity (CSD))

Source: Kumar et al. 2006

9.1.5. Low Availability of Non-Forest Land and Extension of Agriculture into Forests

In the scheduled tribal district the availability of non-forest land and quality of agriculture land is very low. Therefore, cultivation over forest land in the scheduled tribal areas is very common practice including shifting agriculture. In the two scheduled district, Kandhamal and Gajapati, a very high percentage of land is categorized as forest land i.e., 71% and 57% respectively. Of the total non-forest land, the land available for agriculture is very low, and out of which land under private ownership is extremely scarce. Of Orissa's 30 districts the availability of non-forest land is the lowest in Kandhamal district, at 29% only, of which merely 12% of the land is under private holding. Since, agriculture is the major source of livelihood in these backward districts, the large areas of the "presently categorized" forest land has been cultivated by the people for generations.

9.1.6. Local Politics of Exclusion over Land and Forests

The processes which have led to non-recognition of rights of cultivators and local communities over forests and forest land are especially confused in the tribal dominated forested landscapes of Orissa, and are an important cause of poverty and

⁶⁵ The data was submitted through an affidavit by GOO to the Supreme Court. It is also reflected in a reply from MOEF, GOI, to a query raised by a MP from Orissa. (GOO 2004)

⁶⁶ *Ibid.*

⁶⁷ The Campaign for Survival and Dignity is a coalition of tribal organizations and NGOs which is advocating for the Draft Tribal Forest Rights Bill. As a part of the strategy, the Orissa Chapter of NCSO has embarked on filing applications of regularization of pre-1980s cultivation on forest land. This data is collated from the applications which have been filed.

conflict. In shifting cultivation areas there is often a running battle between the FD and the local tribal over shifting cultivation on Reserved Forest lands. The lack of clarity on this matter on the ground level has also made it a major source of harassment and exploitation of tribal and other forest dwellers, with extortion of bribes for tolerating cultivation of land categorized as forests being a common occurrence. The uncertainty caused and extraction of surplus also seems to contribute to poverty in these areas.

The complex and contested genealogies of legal forests in Orissa are illustrated by the case studies. Kandhamal illustrates the issue of non-recognition of shifting cultivation and faulty processes of notification of Reserve Forests in the context of the larger processes of land and forest categorization. It also illustrates the alienation of tribal communities from forests through a number of related processes.

Bolangir illustrate a more peasantised society, where heterogeneous populations live in plains areas interspersed with forest areas. It brings forth the interaction of local political economy with forest and land laws and creation of rights, and the implications of the same for marginalized sections.

In both districts, there is presence of community forest management. However, the contexts are totally different - this is also illustrated in the case studies.

9.2. Policy Recommendations

There are clearly fundamental problems surrounding forest land tenure in Orissa, and this has contributed to marginalisation of poorer groups and exacerbated and caused serious problems of poverty. The land tenure problems coincide with districts with the highest levels of poverty in India and the most frequent starvation deaths. The seriousness of the problems demands urgent redress. Here we recommend measures urgently needed to start to remedy the situation:

9.2.1. Revise Survey & Settlements to properly record rights and give due recognition to old documents as evidence

Major anomalies and discrepancies were made in Kandhamal District at the times of the revenue and forest settlement processes. Problems arising out of this are rampant in Kandhamal and other tribal districts. For instance, within the Baghnadi RF, as mentioned above, many cultivated areas including irrigated paddy land, was not taken into consideration during forest settlement. Many local people even hold officially-recognized historic documents showing their land ownership, but these were ignored or rejected during both Revenue and Forest Settlements. (Many such documents have however become destroyed due to their poor housing and living conditions.) In this way many cultivated lands were declared as forests and the correction of these mistakes now conflicts with the FCA 1980.

- ⇒ *Land settlements, both forest and revenue, are extremely flawed and must be reviewed and re-surveyed properly.*
- ⇒ *All available documents held by local people should be considered and all such cases be recommended to the Supreme Court for granting of permission to settle rights.*

9.2.2. Implement the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Acts 2006

There are innumerable cases of the tribals residing in and cultivating forest land for generations yet lacking any tenure rights. This has excluded them from their fundamental right to livelihood and their ancestral property. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is very progressive legislation which has provisions for addressing this age-old problem.

- ⇒ *Proper implementation of the Act is urgently needed in order to settle the rights of the people who have been residing and cultivating in forest land for generations.*

9.2.3. Frame the Rules for the Panchayat Extension to Scheduled Areas Act (PESA)

PESA is also extremely progressive legislation which also awaits proper implementation in Orissa. The provisions of the central act have not yet been reflected in the State-level Panchayat Raj Acts, and so far the power of Gram Sabha and Palli Sabha in scheduled areas is not different to the non-scheduled areas.

- ⇒ *Provisions should be made to amend Orissa's PESA rules in line with the Central Act. Specific powers should be given to the Panchayats to decide on transfer, sale and acquisition of land in the scheduled areas and from the scheduled tribes.*

9.2.4. Proper Distribution, Demarcation and Possession of Ceiling Surplus Land

Distribution of ceiling surplus land has been a major source of tension, especially in Western and Southern districts of Orissa. The surplus lands are often distributed among the landless beneficiaries without giving proper demarcation and possession. There are innumerable cases where this has resulted in the distributed land remaining under the *de facto* control of the previous landlords, who obstruct the actual beneficiary from assuming ownership the land. There are also many pending cases lying in the court relating to disposal of ceiling surplus land, which excludes many poor landless from their right to minimum livelihood.

- ⇒ *All surplus land previously distributed must be reviewed suo motto by the government, as prescribed in the OLR Act 1960, and land should be restored to the original beneficiaries.*
- ⇒ *Policy amendment is needed to enforce land distribution and make punishment more punitive against the landlords in these cases.*

9.2.5. Confer Rights on Sloping Land through the Extension of Kashipur Tahasil Survey and Settlement Order to Other Scheduled Areas

The Government of Orissa issued an order applicable to all tribal areas of the State *vide* GoO letter no. 14643-R-S-60/2000 dated 23rd March 2000 which allowed for settlement of forest land with up to 30° slope to tribal shifting cultivators. This is one of the most important policy initiatives in this issue, and has the potential to transform tribal land ownership patterns in shifting cultivation areas with permanent *raiya* rights upto 30° slopes and permanent rights above 30° slopes to grow perennial crops. The order has not been enforced till today in any scheduled areas, except Kashipur Tahasil. Furthermore the criteria of settling land only below 30° slope as *raiya* land is not necessary as tribals sustainably cultivate and use land even above 30° slope. There is little evidence that state ownership and management would lead to better and more sustainable management of these lands. However, there is sufficient evidence that tribals are capable of managing these lands through terracing and agro forestry/ agri-horticulture systems.

⇒ *GoO letter no. 14643-R-S-60/2000 should be implemented immediately in a proactive manner.*

⇒ *The order should be revised so that land with greater than 30° slope should also be settled with the customary cultivators.*

9.2.6. Implement circular no 13-1/90-FP92 of the MoEF, GOI on review of Disputed Claims over Forest Land arising out of Forest Settlement

A large proportion of tribals' cultivated forest land fall in the category of disputed claims as per the circular no 13-1/90-FP92.

⇒ *The Government of Orissa should review the whole issue of disputed claims arising from declaration of Deemed Forests, areas known as proposed Reserved Forests and areas where prima facie problems in forest settlements exist. Providing the responsibility of such a review to Forest Department and Revenue Department is unlikely to yield proper results as they are interested parties. Such a review should be taken up by an independent committee set up for this purpose, preferably under the auspices of a House Committee of the Legislative Assembly.*

9.2.7. Accept rights over swidden cultivation land which need to be settled with individuals or communities

The greatest injustice against the tribal communities has been the denial of rights over their customary swidden lands, and it is made doubly tragic because most of this 'land grab' was not a colonial crime, but was carried out after Independence. This single factor has been the most important source of land loss to swiddening tribal communities. Shifting or swidden cultivation has been demonized by the state, based on prejudice rather than scientific proof, and the state has denied rights to the land used for shifting cultivation by converting it into revenue wastelands or forest

lands. This had led to a situation where these lands are still used by the tribal community but without any tenurial security, thereby reducing the incentive to manage these lands better.

⇒ *The right of tribal groups to follow their customary practice of shifting cultivation must be accepted, and rights accorded to cultivators, through settlement, the Forest Rights Act 2006 and other legal provisions*

9.2.8. Provide communal rights on land within traditional boundary of the village

⇒ *Based on the Section 71(4) of Orissa Panchayat Act, 1964, (and the FRA 2006) all wastelands and protected forests within the village should be brought under the control of the Gram Sabha. This needs to be implemented in scheduled areas and the Palli Sabha and Gram Sabha be given management control of all the land that is not patta land. Suitable rules under Gram Panchayat Act, 1964, can be framed for this purpose to ensure that the control of these lands rests genuinely with local communities. Amendments may also be needed to be made in the Orissa Government Land Settlement Act, 1962.*

9.2.9. Review plantation programs in Scheduled areas

State tree plantations by the Forest Department have emerged as a major source of land alienation to scheduled tribes. Government land cultivated by scheduled tribes was and continues to be often targeted for plantation programs. It is also emerging that in order to achieve targets, tribals are being removed from the land occupied by them, even up to the present.

⇒ *Evictions for tree plantations must be immediately stopped. No plantations should be allowed in any scheduled areas without the permission of the Palli Sabha and the scheduled tribe already cultivating the land. All forest species plantations on non-forest revenue land be suspended in case the plantation would lead to legal conversion of such land to Forest Land.*

⇒ *A review of plantations under various schemes, including existing plantations on ground and plantations planned in the future should be taken up urgently, and an analysis of their impact of local tribal economy and access to land be carried out. Forest tree plantations under Forest Development Agency and other forestry programs must be scrutinized from the perspective of tribal access to land.*

⇒ *All existing plantations in Government Land in Scheduled areas on non-forest land should be handed over to scheduled tribe individuals or the Palli Sabha for management, with the total benefit going to the concerned individual or the community. Plantations on forest land as well as natural forests close to settlements should also be handed over to Palli Sabha for management and control, with Forest Department support for preparing micro-plans for these plantations to comply with Supreme Court's directive. In case of legal problems,*

these forests lands can be converted to village forests as per section 28 of Indian Forest Act, 1927.

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