

A DILEMMA OVER TRIBAL LAND RIGHTS IN ODISHA

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The permission for transferring land from tribals to non-tribals was granted with a rider that after such a transfer, the tribal seller or mortgagor should not be landless or homestead-less. | Photo Credit: The Hindu

A Cabinet decision allowing tribals to transfer their land to non-tribals by way of amending the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 (OSATIP) triggered a massive controversy, forcing the [Naveen Patnaik Government to put the two-day-old decision on hold on November 16](#).

The decision made on November 14 says, “a scheduled tribe person may, with the written permission of the sub-collector, make a gift or exchange for public purposes or obtain a loan by securing a mortgage in a public financial institution for agriculture, construction of residential house, higher studies of children, self-employment, business or establishment of small scale industries or transfer the same in favour of a person not belonging to scheduled tribe for the above purpose.”

The permission for transferring land from tribals to non-tribals was granted with a rider that after such a transfer, the tribal seller or mortgagor should not be landless or homestead-less.

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The OSATIP includes strict provisions that not only prohibit the transfer of tribal lands but also criminalise any forced alienation. Additionally, it delineates mechanisms for eviction and the restoration of tribal land.

This was not the first attempt in the past 25 years to amend the OSATIP Act in order to ease tribal land transfer. In 2010, the amendment seeking permission to transfer tribal land was turned down by the President of India. Inter Ministerial Committees and Tribal Advisory Council (TAC) on different occasions had recommended amendments for allowing tribal land transfer.

The Cabinet decision, however, evoked strong resistance from tribal communities as well as activists working on tribal rights. They said the amendment would open the floodgates as far as the transfer of tribal land in scheduled areas is concerned.

As of the 2011 Census, the tribal population in the State stands at 95.91 lakh, comprising

22.85% of the total State population. Odisha is home to 62 distinct tribes, including 13 Particularly Vulnerable Tribal Groups, showcasing one of the most diverse tribal landscapes in the country. It ranks as the third-largest concentration of tribal population, trailing behind Madhya Pradesh and Maharashtra. Scheduled Tribes in Scheduled Areas constitute approximately 68.09% of the total tribal population. Notably, 121 out of the 314 blocks in Odisha have been designated as Scheduled Areas. Furthermore, about 44.70% of the State's geographical expanse falls under the Scheduled Area classification.

The OSATIP 1956 is acknowledged as one of the most stringent legislations aimed at safeguarding tribal interests. This Act was conceived in response to widespread reports of unchecked appropriation of tribal lands in Scheduled Areas. Instances were documented where even small parcels of tribal land were transferred to non-tribals in exchange for a bottle of local brew. For tribal communities, land holds paramount importance as it constitutes their most valuable asset. A majority of tribals lack business expertise, face challenges in transitioning to alternative livelihoods, lack access to capital for starting new ventures, and are relatively recent participants in the realm of technology.

In a draft report, the Comptroller and Auditor General (CAG) of India, which carried out the random study, found that land held by tribals in Odisha had decreased by 12% in the decade between 2005-06 and 2015-16. It had happened despite OSATIP being in force.

Concerned activists feared that the implementation of the amendment could have amounted to an attack on tribal identity. Tribals are traditionally inclined towards subsistence livelihoods and are not driven by the desire to amass wealth rapidly. Tribal rights activists argue that granting permission to transfer land (for obtaining a loan by securing a mortgage in a public financial institution for agriculture, construction of a residential house, higher studies of children, self-employment business or establishment of small-scale industries) would swiftly eliminate the essential fallback option for tribals.

Significant economic disparities persist in Scheduled Areas. At a time when tribal communities face dire economic conditions, non-tribal populations have experienced educational and economic improvements over the past several decades. The OSATIP has played a crucial role in maintaining tribal ownership in Scheduled Areas, even though tribals may be economically disadvantaged compared to their non-tribal counterparts. The proposed amendment could potentially enable non-tribals, especially in southern Odisha districts, to purchase tribal lands, thereby altering the demographic landscape of Scheduled Areas.

Prominent politicians, moneylenders, and business figures have repeatedly acquired extensive portions of tribal land by circumventing the provisions of OSATIP. The proposed amendment, if enacted, would help facilitate the regularisation of unlawfully acquired tribal lands, providing a legal framework for these holdings. According to a tribal researcher, the amendment would open opportunities for corporate houses looking to aggregate land through anonymous persons in Scheduled Areas.

Repeated efforts to amend the OSATIP Act over the past two decades have laid bare the class divisions within tribal communities. A smaller but ambitious segment across various tribes aims to monetise their land parcels as a means of achieving financial progress. In contrast, the majority of scheduled tribes want to retain ownership of their land.

The government aimed to convey a sense of realism with the proposed amendment by including a provision to prevent tribal sellers or mortgagors from being left without land or a homestead. However, the terms 'landless' or 'homestead-less' were not clearly defined. This lack of clarity could potentially allow a tribal individual to sell all of their land while retaining a small token

piece, thus avoiding classification as landless.

Though the government has put the amendment to OSATIP on hold, Opposition political parties are demanding a complete withdrawal of the amendment.

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