

Notes on  
Alienation of Juang communal Lands by the State in  
Juangpirh, Orissa:  
A case study of Kadalibadi Village

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Land Rights Team

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## **Alienation of Juang communal Lands by the State in Juangpirh, Orissa: A case study of Kadalibadi Village**

It is a shock to know that there are villages in mountains and plateaus of Orissa, where the villagers legally own one-twentieth of the village area, and have access to another one-twentieth through user rights<sup>1</sup> only. The injustice involved is compounded when one learns that this village is inhabited by Juangs, an autochthonous primitive tribal group (PTGs), who are the earliest inhabitants of these regions, and who consider the whole Juangpirh as their ancestral home. The Juangs of Kadalibadi have enjoyed customary communal ownership over the village area since times immemorial, though legally they have but access to one tenth of its area.

The village of Kadalibadi is a mockery of Orissa's avowed aspirations for development of its tribal communities and exemplifies the predatory face of the State faced by its hapless tribal people. It illustrates the cavalier manner in which livelihoods and lives of primitive tribal groups are being destroyed in the name of development, in violation of Schedule V of the constitution and the laws framed by the State itself to protect tribal groups. The case study brings out the structural injustice imposed by the State on its tribal people through the very system of formal land tenure.

### **1 Marginalization in the ancestral land**

Kadalibadi is a Juang hamlet in Banspal block of Keonjhar district. An aboriginal austroloid and primitive tribe, Juangs are among few of the most ancient tribes of India whose dialects belong to the Austro-asiatic linguistic family. A recent genetic historical investigation put the origin of *Khandayat* and *Gopal*, the predominant upper castes of Orissa, from this indigenous tribe (Sahoo & Kashyap, 2005).

All Juang hhs in Kadalibadi practice shifting cultivation either fully (15 hhs) or partly (20 hhs) (SCSTRTI, 2002). The Juang have customarily depended on swidden cultivation. While the lowland paddy cultivation meets the food need of an average Juang household for only about a month, yields from swidden take care of their dietary requirement for about 3-6 months (Panda, 1999). Several studies confirm the relationship of shifting cultivation to tribal nutritional security and its role in combating hunger, apart from its customary cultural and social importance. The hill slopes are cultivated in three year sequence, first year sesame, 2<sup>nd</sup> year upland paddy and third year sesame. Then the patch is left fallow for four to five years.

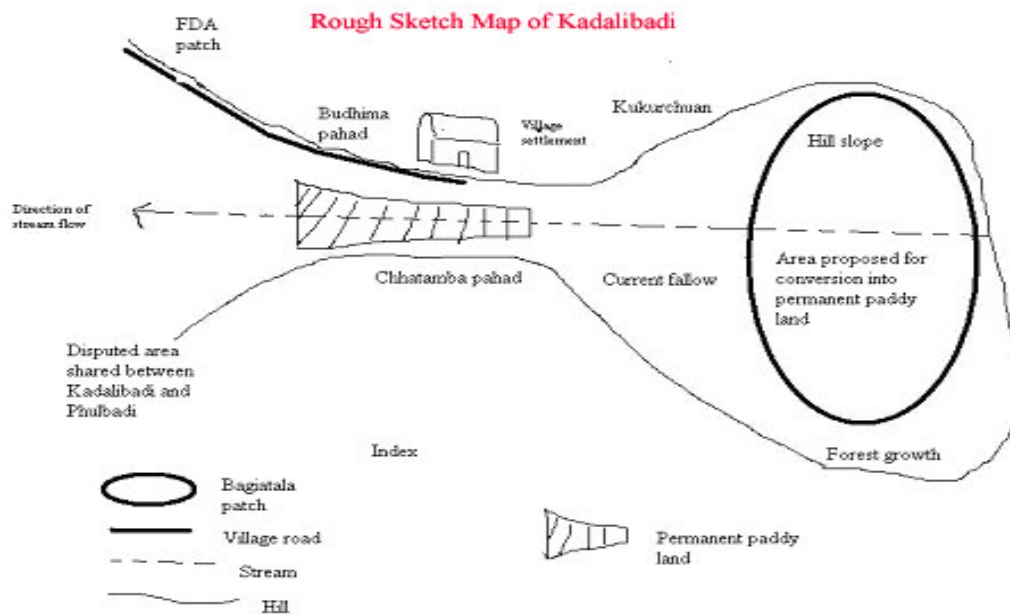
Kadalibadi village is one of the poorest Juang village in Juangpirh. It is located on a hill slope and is surrounded by hills on three sides. A stream called Jamunali flows in the valley. Some permanent paddy patches have been carved out along the stream over time. In 1960s the total area

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<sup>1</sup> Also known as usufruct right or 'dafayati right', it is a form of limited rights usually given with a plantation (mostly fruit) and refers to only rights to use the products (fruits etc.) of that plantation.

under settled cultivation was 1.62 ha. and over the years this area increased to 9.63 ha. by the time of settlement in 1980s.

Shifting cultivation is carried out in the hills around the village. The Juangs have divided the hill slopes in five or more parts so that shifting cultivation is practiced in different patches phase by phase, and this provides them at least one patch where they grow upland paddy, while other patches are used for secondary crops or are left fallow. The four major patches of land which are used in rotation by the Juang households are Bagiatal, Kukurchuan, Telchuan and Chhatamba. One more patch called Parijhanran was disputed between Kadalibadi and the neighboring Phulbadi, but now is shared between the two villages.



BagBagia

tal is the most important patch where both hillslopes and gently sloping lands were available. It was cultivated last year after fallowing with sesame and this year it would have been planted with upland paddy. The villagers have also been planning to divert the stream on the gentle slope and create permanent paddy lands. Most of the village are depending on this patch in the current year for paddy production as other patches are either fallowed or are under cultivation with secondary crops.

However, Bagiatal was transferred this year to Forest department by the Revenue authorities and the land was converted into a plantation under compensatory plantation scheme. The villages protested strongly but they were threatened by police action. Various forestry species have been planted in 43 ha. of land in Bagiatal, and the Juangs have not been able to sow upland paddy. They fear starvation this year as they will have no paddy crop. As the Compensatory afforestation land is to be converted to forest land, there is no possibility of the planned creation of paddy land in Bagiatal, creating another gap in future food security.

## 2 Root of the Problem

In Kadalibadi, **only 25 ha out of total a 283 ha in the village is legally available to the village residents.** 37 out of 44 families hold 25 ha., with an average holding size of only 0.66 ha. The access to agricultural land is seen to worsen further when the types of holdings are analyzed. It shows an abysmally low holding of **0.09 ha of paddy land per household** (includes both low and upland paddy i.e. Biali and Sarad 1, 2 & 3), 0.21 ha of other land including homestead and 0.36 ha of orchard land (bagayat). The households have only usufructory rights on the orchard lands (43% of total holdings) thus reducing the effective ownership (ryoti right) to only 0.38 ha (less than one acre). The quantum of legal landownership plummets further if in the calculation of average holdings, seven landless families' are included.

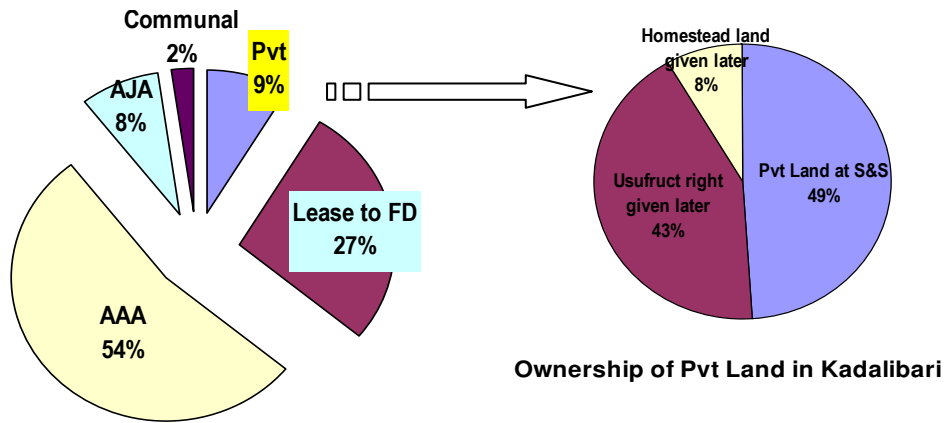
In the Survey and settlement operation carried out in 1970s in 164 villages of Bhuyan-Juang Pirh, most of the tribal lands were recorded as state land and the users of these lands as were branded encroachers without settling their rights (Rath, 2005). Under Kanjipani police station in Keonjhar alone, a total of 5948 plots were recorded as encroached in 84 villages with 1949 encroachers, out of which 71% were tribals. (Keonjhar-Dhenkanal Major Settlement, Keonjhar quoted in Rath, 2005). In this settlement, the communal form of ownership of the Juangs was ignored, and a dual system of individual and state ownership of land was imposed. In Kadalibadi, a total of 12.075 ha. out of the village area of 283 ha. was individually settled with 28 hhs. Out of the land settled with the villagers, only 1.84 ha. was productive paddy land. Rest of the land i.e. 271 ha. was settled as various categories of government land.

Over time, the government has given dafayati rights (usufructory rights) over 10.5 ha. to villagers and another 2.0 ha. as homestead land, bringing their total legal access to land to the grand sum of 24.65 ha. The rest 259 ha. of land in the village is at state's disposal. The fact that all the village land was held in communal ownership by the Juangs of Kadalibadi village was completely ignored. The Juangs continued swidden cultivation on much of the State land, though now they were categorized as unlawful encroachers.

However, the "surplus" state owned land had to be put to use. Therefore, from 1993-1999, 77.186 ha<sup>2</sup>. (27% of the village area) was leased to Forest Department to carry out plantations. This area of 77.186 ha has been diverted from uncultivable waste land (Abad Ajogya Anabadi khata No 32, plot nos 227, 228, 229, 18, 222, 223, 224 & 227) of the Village lying under the control of Revenue Department. Plantations have already been carried out in these lands.

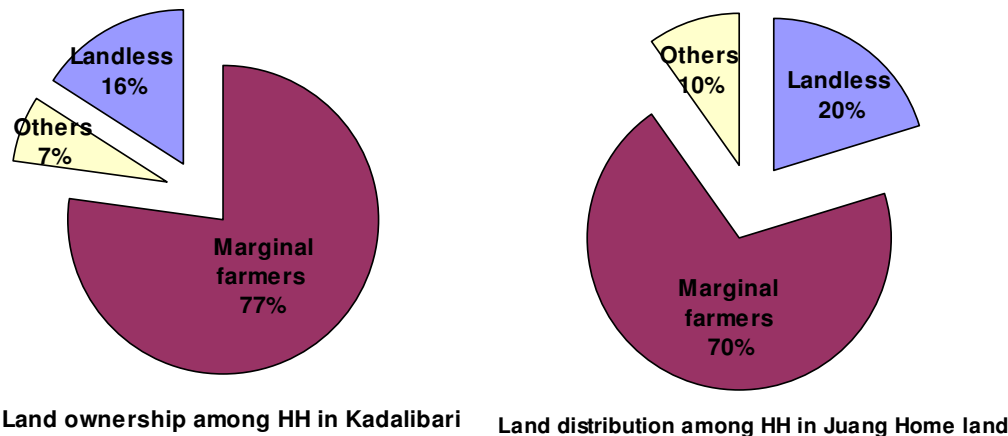
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<sup>2</sup> khata no 32/1 in ROR of Kadalibadi, Telkoi Tehsil, Keonjhar Sub-Division, Keonjhar District  
<http://bhulekh.ori.nic.in>



**Land Ownership in Kadalibadi**

Source: RoR of Kadalibadi. Telkoi Tehsil. Keonjhar Sub-Division. Keonjhar District



**Land ownership among HH in Kadalibari**

**Land distribution among HH in Juang Home land**

Source: RoR of Kadalibadi, Telkoi Tehsil, Keonjhar Sub-Division, Keonjhar District  
<http://bhulekh.ori.nic.in>

Source: SCSTRI. 2002

In 2005, another 43 ha. (12 % of village area) in the village have been leased out to Forest Department for compensatory afforestation for Rungta Mining Company. This is the plantation which was taken over Bagiatal Patch. The company has taken a lease for mining over 43 hectare of forest land in another part of the district. As per FCA, 1980, the same amount of non-forest land should be afforested under compensatory afforestation and the land converted to Forest category. Plantation over this land has already been initiated in 2005 planting season.

This series of plantations have been a double tragedy for the Juangs. Even though they didn't get legal rights on their communal land, they continued to treat it as such and were cultivating these lands. Conversion of major part of their communal lands into plantations by Forest Department deprived them of the access to these swidden lands and has pushed them to starvation levels. The tragedy has been aggravated because the patch selected for this plantation is

the largest and the most important shifting cultivation patch, where the Juangs were also planning to create permanent paddy land. With the compensatory afforestation, this land has effectively become forest land, closing all possibilities of Juangs ever being able to reclaim it. No swidden paddy cultivation has been taken up this year by the Juangs, and starvation looms in their faces.

When the Collector of the District was approached by an activist regarding this situation, his blunt reply was “these people are encroachers in Government Land, and there is no circular forbidding their eviction”.

### **3 Legal and Policy Implications**

The above process has violated many laws, apart from its ethical and social justice implications. The most important violation is that of the Schedule V of the constitution which enjoins the State to protect the Scheduled tribe’s rights in land. The **section 3(iii) of the OSATIP Regulations (1956)** is also violated by turning scheduled tribes “effectively” landless. This section provides a minimum benchmark of 2 acres of irrigated or five acres of unirrigated land for ownership by scheduled tribes before any land in their possession can be transferred. By not recognizing their cultivation rights and by evicting scheduled tribe persons from the land cultivated by them for generations, this provision is violated. Both as per the principle of adverse possession in Orissa Land Reforms Act, 1960 and as per the **section 7(a) of Orissa prevention of Land Encroachment Act, 1972**, such land should have been settled with the landless persons to the extent of one standard acre (equivalent to 4.5 acres of uplands). The Scheduled tribe and Scheduled Tribes (Prevention of Atrocities Act), 1989, also treats wrongful occupation or wrongful dispossession of land of a Scheduled Tribe or Scheduled castes as an atrocity (Section 3(iv) and (v)) which is punishable with imprisonment not less than six months which may extend up to five years (Section 3).

The case also throws up fundamental questions over the land policy in tribal areas, and specially those dealing with the Primitive Tribal Groups. Some of the questions are:

1. Why did lands already under cultivation (shifting cultivation or toila) on hill slopes not settled in favour of the tribal cultivators when it is acknowledged even by various government documents that it is a long held tradition and livelihood option among tribals? This is specially relevant as this policy has led to criminalization of traditional livelihood practice of tribals.
2. When the laws of the state clearly lay down a benchmark of land ownership with tribals (2 irrigated acres or 5 unirrigated acres as per OSATIP Regulations, 1956 and one standard acre through OLR Act, 1956 and through OPLE Act, 1972), how is it that there

- are so many landless and marginal farmers in villages like Kadalibadi, specially when so much government land is available in the village. This is specially unjust as the land originally was held as a communal property by the Juangs.
3. The Vth Schedule enjoins that the rights in land of tribals must be protected. However, as the above case details, the provisions in Vth schedule are being directly contravened in this case by denying the rights of tribals on land customarily owned by them and vital for their subsistence and livelihoods.
  4. The State Government, in context of Samata Judgement, vide a Gazette notification in 2002 has declared that the present laws are adequate to protect the rights of the scheduled tribes, and therefore the GOO doesn't need to pass law based on the lines of Andhra Pradesh Transfer of Land In Scheduled Area regulation, 1959 (as amended in 1970). The case illustrates that the GOO's contention is wrong and deliberately mischievous, for State itself is violating the spirit of Samata Judgement in case of Kadalibari, that too in case of extremely vulnerable Juangs, a PTGs. The situation in parts of Scheduled areas where mining is taking place can well be imagined.

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