

Tribal Land Alienation and Ethnic Conflict: Efficacy of Laws and Policies in BTAD Area

By

Nirmalya Banerjee*

Bimal Musahary was standing in front of his charred hut, staring at the only piece of his belonging that he could still recognize; a half-burnt fan hanging from the ceiling. Villagers of Puniyagaon had all fled to the relief camp at Mudaibori, Bimal himself was also taking shelter in the safety of the camp at night. It was after the riots that had rocked the Udalguri and Darrang districts of Assam in 2008. Inmates of the rather large relief camp at Mudaibori were a mixed bag; there were Bodos, Garos, Asomiyas as well as Bengali Hindus. This camp was in Udalguri district, while the Muslims evicted by the riots were in different relief camps, near Dalgaon in Darrang district.

About a month after the riots had ended, one afternoon a few farmers were harvesting standing crop on a plot of land by the side of national highway 52, not far from the Rowta crossing, an area hit by violence. A group of people stood at the edge of the plot, watching the men working on the field. Men of the group were members of a committee that had been formed in the village to ensure peaceful harvesting. Such committees comprised members of both Bodo and Muslim communities. They had been formed to oversee the process of harvesting, so that people from the two communities do not clash over harvesting rights.

Many of the ethnic clashes that have rocked the north bank of Assam frequently, can be traced back to fight over land; displacing large numbers of people. Different communities would protect their land for all they are worth. When the riots were on, people protected their plots armed with bows and arrows, against possible raids. There were numerous complaints, particularly from tribals, in the riot-hit areas, of their land being

* Is a Journalist, Times of India
Refugee Watch, 37, June 2011

forcibly occupied by newcomers. Such complaints - like "we had sowed paddy with a lot of effort but now when we are going to reap the harvest we are being chased away by Muslims," or "the major part of the crop is still standing, we could harvest only a small part" - were frequently heard. There were also complaints from the Muslims, that they had taken land on lease, cultivated the plots at their own expense for half the share of the crop, but at the time of harvesting they were denied the right by the landowners who took the entire crop.

There have been major incidents of displacements in North east and the area covered by the present Bodoland Territorial Area District stand out particularly because coupled with displacement there has been loss of life as well. There have been clashes between Bodos and immigrant Muslims, there have also been clashes between Bodos and Adivasis, leading to huge displacements of population. There have been instances of major displacements because of violence in other parts of the Northeast also, like repeated riots between ethnic tribals and immigrant Bengalis in Tripura, Naga-Kuki and Kuki-Paite clashes in Manipur, and clashes between different ethnic groups and displacements in recent years in Karbi Anglong district of Assam.

To understand the reasons for the frequent violence and displacements in the Northeast, it is important, therefore, to examine the reasons behind conflict over land between tribals and other communities and scrutinize the efficacy or otherwise of those legislations and government policies which have been tried out over the decades to give protection to tribals and to prevent their land alienation. To keep the discussions within limits, the case of the BTAD area in Assam is taken up here.

When we look at the riots in the BTAD area between 1993 and 1998 we come across disturbing figures of killings and displacements. In October 1993, an estimated 50 people were killed in clashes between Bodos and immigrant Muslims in the Bongaigaon district. Nearly 5,000 Muslim families are still in relief camps in Kokrajhar and Bongaigaon districts. Violence between Bodos and Muslims in Barpeta district in July 1994 led to an estimated 100 deaths, many of the victims were displaced people taking shelter in a relief camp at Bansbari, sheltering Muslims. In May 1996 more than 200 people were killed and over 200,000 displaced in widespread clashes between Bodos and Santhals in Kokrajhar and Bongaigaon districts, among them both Adivasis and Bodos. Over 50 people were estimated to be killed in a series of fresh clashes between Bodos and Santhals between May and September 1998. Relief camps were also attacked. According to one estimate total displaced is 80,000. Between August and October 2008, an estimated 70 people were killed in clashes between Muslims and Bodo in Udalguri and Darrang. Over 100,000 people were rendered homeless from the two communities.

Historical Perspective and Genesis of the Problem

Historian Sujit Choudhary(2007) in his work has described the Bodos as the 'autochthons' of the north bank of the Brahmaputra. But, Choudhary opines, 'in a sense, history failed them'. He goes on to explain that 'historians are unanimous in their assertion that there was a prolonged phase in the early history of the country when mobility from tribe to caste based mainstream society was in operation in a slow but steady and decisive manner. Apparently, the Bodos, because of their uninterrupted proximity to the mainstream society, were potentially suitable for such absorption. But, this did not happen'. His view is that tribals were excluded from the process of plough cultivation while high caste people were settled on the fertile basins of the Brahmaputra valley. Bodos who earlier owned the fertile lands were pushed to the remote jungle areas. In the process, they were deprived of the benefits of irrigation and destined to depend on jhoom cultivation. 'It is thus more probable that the Bodos were actually in possession of the riverine tracts of the plains from which they had to withdraw subsequently only because their land was encroached upon by the new settlers on the strength of the royal charter,' he writes.

Thus, the dispossession of ancestral land of the Bodos could have started much before the Muslim peasants started arriving from East Bengal. The neglect of the Bodos and the consequent backwardness of agriculture in tribal areas helped immigrant communities to occupy cultivable land in these areas. The pressure of land belonging to the Bodos increased further with the incursion of peasants from East Bengal which got momentum with the blessings of the British. Immigrations had taken place in Assam during this period from two different directions. British tea planters brought in tea garden labourers in large numbers from mainland India. The British also decided to settle Muslim peasants from East Bengal to increase food production. Amalendu Guha(1977) in his *Planter-Raj to Swaraj* notes that British planters were also responsible for the land alienation of the Bodos. A liberal wasteland settlement policy of the British Government had tempted planters to grab more land than needed. These planters seized grazing fields and encroached upon jhoom land of tribal cultivators. They used this extra land to settle Adivasis who had been brought in to work in tea gardens as tenants. For the Adivasi labourers coming to Assam from Bihar, Uttar Pradesh and Bengal; this arrangement was an extra incentive. British planters brought in Adivasis; in search of cheap labour, as they could be easily exploited.

A century later, beginning in 1996, when the riots between Bodos and Adivasis started, Bodos resented the Adivasis settling on forest land. The government should not have allowed khas land and reserve forests to be occupied by encroachers. Settlements on the grazing reserves were also leading to tension. Villages set up by newly arrived people on the grazing reserves often abutted on tribal villages. These led to quarrels over plots of

land and other tension. There are such villages of tribals and minorities adjacent to one another in places close to Kokrajhar town.

The conflict between the Bodos and the communities coming from outside started when the Bodos left jhooming and took to wet rice cultivation. The process of change, though delayed, was in a way inevitable. The Bodos, a plains tribe, lived in close proximity of communities who were practising the more advanced technique of plough cultivation. It was a matter of time before they adapted that technique. Within the first three decades of the 20th century, most of the Bodos had adopted the new technique of cultivation.

Major Policy Initiatives and their Shortcomings

While the process of tribals losing control over their land started early, the demand for giving statutory protection to tribal land from Tribal League came late, not till the thirties of the last century. Even before that, the British government, in the form of the 'Line System', had thought about keeping some areas in Assam free from immigrant settlements. 'Under this system, an imaginary line was drawn in the districts under pressure in order to settle immigrants in segregated areas' (Guha 1977). While the subsequent provincial governments of Sayeed Mohammed Saadullah and Gopinath Bordoloi in Assam from 1939 onwards took steps to give protection to tribal land with the help of the Line System, the Muslim League continued to press for its abolition. In 1942, the Saadullah government opened up grazing reserves for settlements by immigrants under a 'grow more food campaign' (Brahm Chowdhury 1993). Chowdhury(1993) writes that 'the government's stand on the land question became an open secret and at the local levels both officials and interested parties found out ways and means to violate the Line System which received some kind of immunity from higher-ups'. Local people could not be stopped from selling land to immigrants even in the restricted areas at a higher price.

The demand for formation of Belts and Blocks to protect the land of tribals came even later, after independence. The Bordoloi Government agreed to the proposal. The Belts and Blocks were formed by incorporation of chapter X in the Assam Land and Revenue Regulation 1886 through an ammendment (Assam Act XV of 1947), an important piece of legislation which deserves scrutiny in some detail. But, the Belts and Blocks, too, met with a fate similar to that of the "Line System", partly because of apathy of government officials and partly because of lacunae in the Regulations themselves.

Chapter X of Assam Land Regulation Act

Although the Government appeared to be in right earnest in giving protection to tribal land, a careful examination of the provisions of Chapter X of the Regulation titled "Protection of Backward Classes," - reveals

shortcomings in the legal provisions. Some authors have pointed to the irony that in the amended version of the Assam Land Regulation Act 1886, meant to give protection to tribal land, the word "tribal" was omitted from the title of Chapter X. One is left wondering if the amendments were really meant to benefit the tribals or had a much larger target group in mind.

In fact, clause 160(1) of the act, which is a part of Chapter X, does not lay down in so many words that the protection is meant only for tribals.

"... Government may adopt such measures as it deems fit for the protection of these classes who on account of their primitive conditions and lack of education or material advantage are incapable of looking after their own welfare in so far as the welfare depends upon their having sufficient land for their maintenance," clause 160(1) laid down.

The next clause, Clause 160 (2), empowered the government to take a decision on which classes of people would get the benefit of protection, thus leaving elbow room to the bureaucracy. "The government may by notification in the official gazette specify the classes of people whom it considers entitled to protection by such measures as aforesaid," it said.

The Rules framed under section 171 of Chapter X of the Regulation, however, mentioned the word "tribal" explicitly. "The disposal of land within the tribal belts and blocks constituted under section 161 of the regulation shall be made in accordance with the provisions of these rules," it said under Clause 1 of the Rules. Section 161 provided for constitution of compact areas for the notified classes of people. It can thus be presumed that the lawmakers, instead of laying down clearly that the belts and blocks were meant for the protection of tribal land, left it to the discretion of the government to decide on this. This left leeway for officials to bend rules.

Much power was given to the Deputy Commissioners to take decisions. "Settlement of land under these rules will only be on written application to be made to the Deputy Commissioner or the officer empowered on his behalf," Clause 3 of the Rules said.

The Deputy Commissioners were also the empowered authority to allow transfer of land within the belts and blocks. Though section 164(2) of the act laid down that no land holder shall transfer his land in belt and block to (a) any person not belonging to a class of people mentioned under section 160 or (b) to any person who is not a permanent resident in the belt and block, section 164(2)(b) also laid down that "Provided that no such land holder shall transfer his land in a belt and block to a person who is a permanent resident of that belt or block who does not belong to a class of people notified under section 160 *except with the previous permission of the Deputy Commissioner* (emphasis added)." Thus, transfer of land to a person belonging to classes not listed under the regulations, tribals or backward classes, but a permanent resident of the belt and block, was allowed at the discretion of the Deputy Commissioner. It is not difficult to understand that it was possible for more enterprising communities to lure poor tribals with money to get control of their land.

Section 166 of the act gave immunity against prosecution to district authorities while implementing the provisions of the act, thus allowing them considerable freedom of action. "No suit shall lie against any public servant for anything done by him in good faith in this chapter," the section laid down.

The same Rules framed under section 171 of Chapter X of the Regulation, clause 2, also laid down the classes of people entitled to protection. "Cultivators pertaining to the following classes, namely plains tribals, hill tribals, tea garden labourers, Santhals, Nepali cultivators-graziers and scheduled castes have since been notified as persons entitled to protection, vide notification No. RP69/46/19 dated the 5th December 1947," it said. Thus, tea garden labourers, Santhals, Nepali cultivators and scheduled castes were also competing with the plains tribal, that is the Bodos, in the tribal belts and blocks.

More importantly, however, it is necessary to scrutinize some provisions of section 163 and Rule 5 to understand how large numbers of people are homeless due to river erosion of the Brahmaputra river and have come to occupy large tracts of land in tribal belts and blocks, even if they do not belong to any of the classes of people detailed under clause 2 of the Rules.

"The disposal of land in areas to which provisions of this chapter apply for the purpose of ordinary cultivation ... shall be in accordance with such policy and procedure as may be adopted and directed by the state government," section 163(1) said, detailing provisions for disposal of land for cultivation. And section 163(2), read with subsection(c) (1) laid down that "In adopting and directing such policy and procedure, the state government shall take into consideration, ... if the extent of cultivable land available for settlement in belts and blocks is large enough, the bona fide needs of ... The persons belonging to other classes of people residing in the belt or block from before the constitution of the belt or block." A subsequent amendment laid down, however, that "no settlement with the persons belonging to the classes of people mentioned in clause (c) of subsection (2), shall be made except with the previous approval of the state government," underscoring the need for a government sanction while disposing land for cultivation to other classes of people.

Finally, Rules under section 171, subsection 5(2)(a) said "When settlement has to be given to individuals, preference shall be given in the following order : Settlement holders belonging to classes of people under section 160(2) or mentioned in section 163(2) *who have been rendered landless due to flood, erosion or earthquake* or due to acquisition of their land by the government for public purpose (emphasis added)."

It is no wonder that people rendered homeless due to the change in course of the Brahmaputra river, residents of Assam for a long time, settled on these belts and blocks. Often people who have crossed borders recently also want to settle in the tribal lands and pretend to be homeless by flood and erosion.

Since it is mostly the Muslim cultivators who have traditionally settled in these chars and chaporis of the Brahmaputra which are frequently wiped out by flood and erosion, it sometimes becomes difficult to distinguish if people settled in the tribal areas are people who had come a long time ago or are people who have arrived lately. In Brahmaputra chars in Darrang district, for instance, there are new settlements. There are two conflicting versions relating the origin of the occupants. One version is that they have entered illegally from Bangladesh recently and traversed the riverine tracts to settle there. The other is that they had come from places like Nagaon where because of changes in the course of the Brahmaputra they lost their land, and they are really old settlers of Assam.

Bodoland Autonomous Council, 1993

Although the move to form Belts and Blocks to protect the land of tribals was taken by the Congress-led government at the behest of the Tribal League, it appears there was not much protest at the ground level when the provision of the Belts and Blocks were being violated and land in tribal reserves were passing into the hands of non-tribals. Land was also carved out of tribal blocks to accommodate refugees from East Pakistan. The Plains Tribal Council of Assam took up the issue and started raising it in various forums. At a later stage, this was taken up by All Bodo Students Union. Among the issues highlighted by ABSU in support of its demand for a separate Bodoland state, the need for protection to tribal land featured in equal importance with demand for recognition of Bodo language. It will be apt here to examine a detailed memorandum that ABSU had submitted to the Prime Minister under the title "Why Separate State of Bodoland."

"Land problem is the most burning problem of tribals. In fact, tribals cannot live without land; without land lives of common tribal people become very much miserable which is now happening to tribals of Assam. Now, about 70% of tribal families have become practically landless whereas 90% of tribal people depend on agriculture. Little plots of agricultural lands cannot suffice to tribals to procure a good harvest to cover whole year for their maintenance of food. As a result, most of the rural tribal families are half-starved.

The so-called protective measures of Tribal Belts and Blocks provided in the Chapter X of Assam Land Revenue Regulation Act 1886 which is practically a farce Act have not been protected at all for the interests of the tribals. All the tribal villages and areas also have not been covered by the Tribal Belts and Blocks. In Assam, there are as many as 45 Tribal Belts and Blocks now covering an area of total 12,528,320 bighas but nowhere they have been preserved by the enforcement of law to the reality." According to the ABSU, non-tribals who have encroached and illegally occupied these lands have also obtained land pattas in connivance with a section of government officials. From this, the demand for a separate state was but one step. "...Non-tribal encroachers such as non-indigenous people

have formed majority in tribal areas and oppressed the tribal people and thus interest of tribals are not protected."

The agitation which ABSU launched reinforced by the formation of militant groups like Boro Security Force, finally led to the constitution of the Bodo Autonomous Council in 1993, under a state act passed in the Assam assembly, a most significant policy initiative to bring the situation in the north bank of the Brahmaputra under control. But the BAC experiment had inherent shortcomings.

The Bodos realized soon enough that an autonomous council formed under a state act did not have much power. The BAC Act, an act of the Assam government, merely gave executive powers to the General Council on the subject of Land and Land Revenue. The Memorandum of Settlement that had been signed prior to the formation of BAC, popularly called the Bodo Accord, had in Clause 7, a "Special Provision for the BAC area" that stated:

The General Council shall be consulted and its views shall be given due regard before any law made on the following subjects is implemented in the BAC area :

- i) the religious or social practices of the Bodos,
- ii) the Bodo customary laws and procedures; and
- iii) the ownership and transfer of land within the BAC area.

Thus the autonomous council was given merely an advisory role in framing of laws regarding land, it had no statutory role. This provision of the Memorandum of Settlement was not incorporated in the BAC Act, thus making it only a statement of intent of the Assam government.

BAC was a non-starter from the very beginning, devoid of powers as well as funds. Naturally, neither could it prevent the alienation of tribal land, nor could it address the developmental needs of areas inhabited by the Bodos. The demand for a separate state continued to boil. One of the festering sores was the BAC area lacking contiguity and the demand of the Bodos to include 515 more villages to make the area a contiguous one. The argument of the Assam government in excluding these was that Bodos were in a minority in these areas, the process of ethnic cleansing intensified in an effort to make the villages Bodo-majority ones.

Bodoland Territorial Council, 2003

Failing to bring the situation under control, the Assam government finally settled for a constitutional guarantee for the autonomous council for the Bodos, which entailed more powers. A memorandum of settlement was signed with the Assam government in February 2003; and the Bodoland Territorial Council was born by an amendment of the Constitution. But the National Democratic Front of Bodoland stayed out of it.

According to NDFB's website, one of the main issues of demand for a sovereign status for the Bodos goes back to land alienation. It is listed as one of the reasons for economic subjugation of the Bodos.

"Since the last part of the 19th century the Boro people have however been facing the problem of land alienation in alarming magnitude. Large-scale migration from East Bengal (Erstwhile East Pakistan, now Bangladesh), Nepal as well as from the mainland India and their settlement in Boro areas has adversely affected the economy of the Boro people... In its attempt to protect tribal land, the Tribal League had an agreement with Muslim League in 1939 wherein the latter agreed to accept the tribal demand for the line system ... The Muslim League leader Md. Sadulla who became the Chief Minister of Assam with the support of the Tribal League not only miserably failed to fulfill his commitment but also brought large number of Muslim migrants from East Bengal to settle in the Boro areas. The Tribal League had to change the side and made another breakthrough in 1946 when it concluded an agreement with the Assam Pradesh Congress Committee and succeeded in getting certain provision of Chapter-X of Assam Land and Revenue Regulation Act 1886 amended... The idea of protecting the tribal lands by creating tribal belts and blocks was noble. But the state government did not enforce the act in its letter and spirit. ... As a result, large-scale land alienation continued unabated under the successive state governments. Most of the tribal lands have gone into the hands of the non-tribals."

Under the Sixth schedule, the Bodoland Territorial Council has sufficient jurisdiction over land by virtue of constitutional provisions. The issue of protection of tribal land did figure in black and white in the memorandum of settlement between the Centre, the Assam government and the Bodo Liberation Tigers. "The objectives of the agreement are : to create an Autonomous self governing body to be known as Bodoland Territorial Council(BTC) within the State of Assam and to provide Constitutional protection under Sixth Schedule to the said autonomous body : to fulfil economic, educational and linguistic aspirations and *the preservation of land-rights*(emphasis added), socio-cultural and ethnic identity of the Bodos; and to speed up the infrastructure development in the BTC area," were the Objectives under the Memorandum of Settlement.

Under The Sixth Schedule To The Constitution (Amendment) Act, 2003, paragraph 3B, section(1) subsection (xv), the Bodoland Territorial Council was empowered to make laws with respect to land and revenue within its area.

But, the additional powers given to the BTC over land under the sixth schedule had one rider: the power was given with a prospective effect, not with a retrospective effect. Non-tribals, provided they are Indian citizens, will continue to enjoy the right over their plots of land had they been owning them since before the formation of the BTC. It was a part of the MoS the BLT had signed.

The amended act laid down:

Provided that nothing in such laws shall -

- (a) Extinguish or modify the existing rights and privileges of any citizen in respect of his land at the date of commencement of this Act; and

- (b) Disallow any citizen from acquiring land either by way of inheritance, allotment, settlement or by any other way of transfer if such citizen is otherwise eligible for such acquisition of land within the Bodoland Territorial Areas District.

Thus, by virtue of the provisions under the act, BTC is now in a position to prevent fresh occupations of tribal land by non-tribals, but cannot undo what has happened in the past. Fresh transfers are also allowed, provided they are permissible. A retrospective effect was not given to the provisions as already a large number of people were already settled on tribal land. A move to recoup these lands from non-tribals could have resulted in a human tragedy. The lawmakers also tried to protect the rights of communities other than Bodos settled in the BTAD area.

This provision for protection to other communities was, there in the earlier BAC Act of 1993 also. Section 51 of the act lay down:

"All rights and interests of the non-tribal Indian citizens on the date of constitution of the Bodoland Autonomous Council within the Council Area shall be protected in matters pertaining to land and their language."

One provision of the BAC Act of 1993 deserves a special mention. Under Clause 64 it was provided:

"The General Council shall, within the laws of the land, take steps to protect the demographic complexion of the area falling within its jurisdiction."

A large number of people are believed to have entered the present BTAD area between 1993 and 2003 and occupied land. The provision of the BTC Act of 2003 that those residing in the BTAD area at the commencement of the act would continue to enjoy their right over land had legalized the stay of a large number of people who had entered the area in the 10-year period. There is a view the act should have been given retrospective effect at least since 1993, when the Bodos got their first autonomous council, particularly in the light of Clause 64 of BAC Act, 1993.

BTC claims it is trying to check fresh transfers of tribal land to non-tribals since the formation of the council under the sixth schedule of the Constitution. Transfer of tribal land to non-tribals is not allowed under any circumstances. And in case of other types of land transfers - tribals to tribals, non-tribals to non-tribals and non-tribals to tribals - the recipient of the land has to establish to the authorities that he is a genuine resident of the BTAD area, having homestead land and being a patta holder. In case of a non-tribal being the recipient, the BTC authorities are doubly cautious to check if he is legally eligible to receive the land. For ascertaining legal eligibility, the BTC authorities are applying the criteria defined in the Tribal Belts and Blocks Regulations of 1947. The person has to establish that he or his forefather was residing in the area before the date of notification of the Belts and Blocks criteria and that he is eligible to get land as one of the protected classes under the Belts and Blocks regulations.

References

- Brahm Chowdhury, Srimati Bijoya Laxmi. 1993.*Bodos (Kacharis) At a Glance*. Bongaigaon: Tribal Institute.
- Choudhury, Sujit. 2007.*The Bodos: Emergence and Assertion of an Ethnic Minority*. Shimla: Indian Institute of Advanced Studies.
- Guha, Amalendu. 1977.*Planter-Raj to Swaraj*. New Delhi: ICHR
- Others
- www.neportal.org/northeastfiles/Assam/ActsOrdinances/TheAssamRegulation1886.PDF
- Some Important Acts and Amendments of Indian Constitution concerning Bodoland Territorial Council, Published by Bodoland Territorial Council