



Valuing the ‘bundle of land rights’: On formalising indigenous people’s (*adivasis*) land rights in Kerala, India

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ABSTRACT

Indigenous people’s struggles in South India for the last four decades have been centred on the general politics of land rights. However, struggles in the recent past have been clearly delineated as striving to not merely gain access to land for cultivation, but also to claim formal individual titles to parcels of land. Taking this as the point of departure, a study was undertaken with the objective of assessing the willingness to pay (WTP) for obtaining management rights as well as individual titles to land among the indigenous people in Kerala, using the contingent valuation method (CVM). Two types of land market exist in the region: the *adivasi* land market and the general land market. The *adivasi* land market is imperfect and transactions are restricted to within the indigenous population. This study shows that indigenous people are willing to pay a higher amount than the existing market price for *adivasi* lands. The WTP for obtaining formal management rights for *adivasi* land is estimated to be 20.75 per cent of the existing general land market price while the WTP for obtaining formal ownership rights is 32.63 per cent.

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Introduction

Indigenous people’s¹ struggles in Kerala for the last four decades have centred on the general politics of land rights. However, struggles in the recent past have been clearly delineated as striving to not merely gain access to land for cultivation, but also to claim formal individual titles to parcels of land. This has indeed been articulated in the 2003 *Muthanga* struggle, where the *adivasis* enacted what Kjosavik refers to as a ‘pre-living of imagined futures’ (Kjosavik, 2004, 2005, 2010; Kjosavik and Shanmugaratnam, 2006, 2007). The land property rights and other social institutions that the *adivasis* chose to adopt as part of the struggle pointed to a new ‘social imaginary’, which they ‘pre-lived’ for the 44-day long struggle that was eventually crushed by the state. The indigenous people entered a state-owned ‘forest land’ in a place called *Muthanga* in Wayanad, South India where they established an *adivasi* settlement. While this was interpreted as an illegal action by the authorities and

the dominant groups, the *adivasis* regarded it as a mere ‘return’ to their ancestral lands. In this settlement, modern systems of land property rights were adopted, that is, individual holdings, and demands for individual titles to land were raised. The new generation of *adivasis* believe that their ancestors’ lack of awareness of the value of land in market terms and the implications of land titles were exploited by outsiders and, consequently, they were cheated out of their land rights. The institutional incongruence with regard to property rights (common property among *adivasis* and private property among British colonialists and settlers) that existed in Wayanad, northern Kerala from the colonial and settler period, was a major reason for the alienation of *adivasi* lands (Kjosavik and Shanmugaratnam, 2007). The present generation does not want this institutional incongruence to continue for fear that it will be to their disadvantage, given that the private property regime is privileged over the common property regime that has prevailed historically among the *adivasis* of Wayanad (Kjosavik and Shanmugaratnam, 2007). Therefore, the indigenous people’s demands are articulated in terms of individual titles to land.

Taking this as the point of departure, a study was undertaken with the objective of assessing the willingness to pay (WTP) for obtaining management rights as well as individual titles to land among the indigenous people in Kerala, using the contingent valuation method. The *adivasi* land areas are characterised by the prevalence of imperfect land markets and partially institutionalised/formalised land rights. A niche market exists for lands owned

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¹ We use the term indigenous people and *adivasis* interchangeably in this paper. The indigenous people of India refer to themselves as *adivasis*, meaning first inhabitants, while the term ‘tribe’ is used in the Constitution of India. Within the larger Indian administrative system, the term Scheduled Tribe is usually employed to refer to the *adivasis*.

by the *adivasis* because the 5th Schedule of the Indian Constitution does not, as a rule, allow the sale of *adivasi* lands to non-*adivasis*. The fragmentation of holdings, restricted land supply, and reduced internal land market² prices are all characteristics of indigenous land areas. Illegal tenancy systems have also crept into the area (Krishnakumar, 2008), adding to the complexities of indigenous land property rights issues. Therefore, in order to comprehend the WTP for hierarchical land rights, the existing property rights structure in indigenous areas is also discussed in this paper.

The study was undertaken in the Wayanad district, northern Kerala. Wayanad has the highest percentage *adivasi* population—constituting approximately 17 per cent of the district's total population. Six major *Adivasi* communities have been living here from time immemorial: the *Kurumar* and *Kurichiyar*, the *Kattunaickar*, the *Uralikurumas*, and the *Paniyar* and *Adiyar* (Kjosavik and Shanmugaratnam, 2004). The *Paniyar* are the demographically dominant group; they work as wage labourers in the rice fields and plantations. The *Adiyar* also earn their livelihood through wage labour. The *Kuruchiyar* and *Kurumar* communities are traditionally agriculturists. The *Kattunaickar* are essentially a foraging group, known for their expertise in wild-bee honey collection, and so are the *Uralikurumar*. The in-migrants to this region belong to a mixed socio-cultural group of non-*adivasi* origin.

The section 'Land property rights' briefly outlines the property rights concepts regarding land. This is followed in 'Methodology' section with a detailed description of the valuation method employed in this study, including the selection of the sample and the characteristics of the respondents. In the process, we critically reflect on the method used, discussing the choice model employed for eliciting willingness to pay (WTP) for hierarchical land rights. The section 'Results and discussion' presents the results alongside a detailed discussion of the policy implications of the WTP estimates on land rights. The section begins by analysing the existing land property rights structure in the indigenous areas, which shows that the transfer of land rights is limited in the indigenous areas. We proceed with analysing WTP for obtaining land rights, as the main obstacle in transferring the rights is reported to be the exorbitant cost involved. Indigenous people's willingness to pay for land rights is compared with prices in the general land market as well as the *adivasi* land market. The salient results and their policy implications are highlighted in the concluding section.

Land property rights

Property rights can be described as a set of economic and social relations that define the position of each individual with respect to the utilisation of a resource (Furubotn and Pejovich, 1972). Formal property rights are expected to emerge when the gain from a change exceeds the cost (Demsetz, 2002). The evolutionary theory of land rights proposes that, as the value of land increases, property rights evolve endogenously from common property to individual property (Platteau, 1996). Kjosavik and Shanmugaratnam (2007), however, hold the position that institutions such as property rights are historically constituted and reconstituted, and both external and internal factors may cause changes in institutions. Economists argue that a well-functioning property rights system is essential for economic development (Miceli and Kieyah, 2003). De Soto (2000) claims that the failure to develop formal title systems to property is obstructing capitalist development in developing countries. Property rights are often thought of consisting of a bundle of rights. The idea of property rights as a bundle of specific use rights has its foundation in the works of Hohfeld (1919) and Honore (1961).

Table 1
Theoretical PRs matrix.

	Access	Withdrawal	Management	Exclusion	Alienation
Authorised entrant	✓				
Authorised user	✓	✓			
Claimant	✓	✓	✓		
Proprietor	✓	✓	✓	✓	
Owner	✓	✓	✓	✓	✓

Source: Schlager and Ostrom (1993).

According to Hohfeld, for each thing one owns, a corresponding bundle of rights is needed to constitute ownership of the thing; the bundle of rights varies depending on the object. The standard incidents of ownership suggested by Honore comprise the right to possess, the right to use, the right to manage, the right to the income, the right to the capital, the right to the security, the rights or incidents of transmissibility and absence of term, the prohibition of harmful use, the liability to execution, and the incident of residuality. In a political economic framework, Schlager and Ostrom (1993) propose the following categories of bundle of rights: access and withdrawal, management, exclusion, and alienation rights. *Access* refers to the right to enter a defined physical property. *Withdrawal* refers to the right to obtain the products of a resource. *Management* refers to the right to regulate internal use patterns and transform the resource by making improvements. *Exclusion* refers to the right to determine who will have access rights, and how those rights may be used. *Alienation* refers to the right to sell or lease management and exclusion rights (i.e. transferability) (Schlager and Ostrom, 1993). Furthermore, rights holders can be grouped operationally into different categories based on the bundle of rights they hold (see Table 1). Authorised users have the rights of access and withdrawal but lack the authority to devise the rules of management or to enforce the exclusion of others. Claimants possess rights of management in addition to the rights of authorised users. Though they devise management rules, claimants have no authority in limiting the access and withdrawal rights of users. Proprietors authorise who may access a resource and how resources may be utilised. They do not, however, have full alienation rights. Owners retain the authority to exploit and transfer all other rights. Ultimately this refers to the owner's ability to buy and sell the property itself (Stevens, 1997).

One of the criticisms against the bundle of rights property structure discussed above is its implicit message that property is infinitely decomposable. Critics emphasise the significance of boundaries and exclusion (Merril and Smith, 2001; Penner, 1996; Smith, 2004). The bundle of rights formulation is marked by the absence of both a canonical formulation of property rights and the methodology to deal with property issues (Penner, 1996), as it is often limited to the legal philosophies of the Hohfeld–Honore schema.

Johnson (2007) argues that 'the bundle of rights as a theory of property did not present a new normative idea, but an analytical and descriptive one', even though the theory developed as a result of serious philosophical debate on legal rights and liberties. Although the concept does not provide a set of social values, it is both flexible and adaptable and could therefore be useful in promoting different value systems, such as the commodification view that defines property by its exchange value, or the classical liberal view of property where the rights-holder has absolute dominion and control within the physical borders of the property. Further, as an analytical concept, the bundle of rights does not resolve conflicts on a normative level, for example, the fairness question when rights are in conflict (Johnson, 2007). 'Using the bundle of rights concept, those who have property will continue to hold it and be supported in their rights and obligations by state power, with an

² Due to the restriction of land transactions, the land market among *adivasi* lands is imperfect and the prices are lower than the general land market in the region.

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