

# ARE WE HEADING TOWARDS ADIVASI\* GENOCIDE IN CHHATTISGARH?

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## Abstract

Sori has risen from the ashes as the symbol of Adivasis struggles in India over the past one decade. Adivasis and the ongoing Maoist conflict and anti-Maoist operations – whether it is under the erstwhile peace movement of ‘Salwa Judum’ or the ongoing ‘Operation Green Hunt’ – need a critical scanner. Many Sori are victims to state violence for the benefit of the corporates.

There are several laws in India that favour the Adivasi populations, however most of them are either not implemented properly or forced to stay defunct. Two important laws namely ‘Panchayats (Extension to Scheduled Areas) Act-1996 (PESA) and the ‘Forest Rights Act-2006’ (FRA) were enacted after long struggles by the Adivasi people. These are active on papers yet inactive in real terms. The two laws could have prevented several conflicts in India. On the other hand most the Adivasi zones in Central India are severely under Maoist menace. Despite the menace of Maoism, the corporate houses are finding a red carpet welcome in the State. This is not just in one part, but a common feature across the state, where there is a mineral resource. Thus land alienation is the eventuality for the Adivasis. The entire theory of development seems to be banking on the belief that Adivasis have nothing valid with them, no education, no knowledge, no wisdom and therefore they have no culture or civilisation. This antagonistic approach of the state has created much of the troubles for the Adivasis. Thus the plunder of resources has a rationale of development.

The paper is an attempt to explore the interconnections between corporate greed, land acquisition, sustenance of the conflict, gross violation of human rights, targeting Adivasi population, non-implementation of pro-Adivasi laws, strict implementation of anti-Adivasi laws and several patterns of misinterpretation of Acts and laws. It also raises the question of justice concerns and justice delivery mechanisms. How the ‘conspiracy theory’ of elimination by pitting Adivasis against each fits to perfection is investigated. This would lead to mass-scale Adivasi genocide in south Chhattisgarh – one of the last frontiers of Adivasi India.

***Keywords: Adivasi, Maoist Conflict, PESA, FRA, Land alienation, Chhattisgarh***

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\* The term Adivasi is used to denote the Tribal communities of India. They are officially notified as Scheduled Tribes as per the Constitution of India.

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## **Soni Sori – The Symbol of India’s Adivasi Struggles**

The story of Soni Sori is not hidden from the world. She has emerged as a symbol of Human Rights Defence over the last one decade. She has been constantly in the discussions for facing the horrible torture and violence while being in jail under the allegation of being a Maoist. Sori has risen from the ashes as the symbol of Adivasis struggles in India over the past few years. The police and administration have been consistently troubling her and finally she had to take refuge in AamAdmi Party (AAP). Sori was a teacher in a government-run Adivasi school in Chhattisgarh’s Dantewada district. Coming from a small village Sameli of Dantewada in south Bastar, she has now turned to be an activist of Adivasi rights (Tiphange 2015). A teacher turned political leader, Sori was arrested in 2011 on charges against acting as conduit for Maoists. Later she was acquitted in six of the eight cases filed against her (ToI 2015).

Sori symbolises the plight of the Adivasis of Bastar who are targeted, humiliated, tortured and sandwiched in the conflict between the Maoists and the State. Much of the stories of the inhuman torture in police custody and the subsequent intervention of the Supreme Court of India are not hidden from most of the world. Sori’s police hunting has a long history at multiple levels, which continues till today, through a different format. Though the earlier one was a direct attack – as she single-handedly held the fort to defend the Adivasi rights in a context of labelling her as a Maoist– the current one is indirect and much destructive in its very design. The present one is a more sophisticated strategy to completely isolate her from the existing socio-cultural spaces and malign her personal character too.

### **The Recent Build-up**

Recently on August 1, 2015, Inspector General (IG), SRP Kalluri issued a call for excommunication of Soni Sori, LingaKodopi and other AAP members working with them. The Dantewada Superintendent of Police (SP) personally threatened residents of Nahadi to not work with Soni Sori (UFB 2015).

On July 30, the Dantewada police claimed to have attained a big leap in the anti-Maoist operations. In fact Soni Sori exposed the fake encounter of July 29 in Nahadi village of Dantewada district, contrary to the claims of police to have gunned down HemlaPodiya, a dangerous Maoist commander in a fierce encounter in the jungles of Nahadi village. The same day Soni Sori was approached by the villagers informing her of the fake encounter. Next day,

few people including Soni Sori, LingaramKodopi, Bela Bhatia visited the incident site, met with the villagers and uncovered that there was no an encounter between the police and Maoists at all. It was a cold-blooded murder of an unarmed villager in broad daylight in front of his house (UFB 2015).

Sori took two young women HemlaHira and HemlaBhima, the eye witnesses of the incident, from the Nahadi village and exposed the fake encounter by organising a press conference in Jagdalpur on July 31. Since Sori exposed this fake encounter, IG Kalluri targeted her directly by spreading rumours in her home townGeedam, where she lives with her children. Here she has the support of a small, but active circle of local activists and human rights defenders. Another incident happened on August 1, where a local trader was stabbed to death in a market of Geedam in a business feud. Kalluri, along with the Superintendent of Police (SP) and Sub-Divisional Magistrate (SDM) of Dantewada, met with the trading community to address the natural anguish at the lack of security after the killing of a trader in broad daylight. He applied this opportunity to target Soni Sori.

Instead of allaying the traders' fears and restoring their confidence in law and order, the IG publicly blamed Soni Sori for these attacks and exhorted everyone to excommunicate Soni Sori and her associates (Dahat 2015). He further alleged that Soni Sori was in fact giving names of traders to be killed to the Maoists, who were carrying out these attacks. Instigated by such rhetoric of the IG, several young men, accompanied by the police, went to Sori's house, surrounded it and shouted slogans. While they went on shouting slogans only Sori's young children were present inside the house, and they have been thoroughly traumatised by the whole incident (UFB 2015).

Applying the murder of a trader as a tactical opportunity, Kalluri has succeeded to create a belligerent sense of distrust amongst the community against the human rights defenders. Safety of Sori is at risk and many activists fear the demolition of her house in Geedam along with attack on family members and associates. AAP and other social activist together staged a dharna (sit-in protest) on the World Day of Indigenous People on August 9, 2015 in Raipur. The situation is yet not normal in Geedam.

However Sori is assertive and affirmed not to give up and continue to fight for the rights of Adivasis in Bastar. 'I was not in Geedam when they gathered near my house. My daughters, who were inside the house, were threatened by the protestors. Everyone knows who

instigated the crowd against me. I am a widow today because of the Bastar police. But I am not going to stop fighting for the rights of Bastar tribals,' she mentioned in an interview (Dahat 2015).

### **Adivasis and the Maoist Conflict**

Adivasis and the ongoing Maoist conflict and anti-Maoist operations – whether it is under the erstwhile peace movement of SalwaJudum<sup>1</sup> or the ongoing Operation Green Hunt – needs a critical scanner. Meanwhile there are a few more encounters by security forces and Maoist ambushes reported. While the presence and functionality of security forces in the Maoist domain of south Chhattisgarh needs a critical review in the context of targeting Adivasi population, the role of Maoist in aggravating the conflict cannot be undermined. This is not a singled out case as such. The state funded vigilante army 'SalwaJudum' has been continued in a new format despite clear directives from the Supreme Court.

Maoist presence in the State is since early to mid eighties. The southern part of Chhattisgarh has been ripped off with intense violence, particularly in the past ten years. At one level Maoism and Maoist party had grown to unmanageable extents and on another level the violence and counter violence have also increased to unpredictable magnitude. The chain of violence and counter violence between the Maoists and State agencies has created a situation of internal war in the state (George 2015). One interesting observation is that a sizeable number of the security forces, the Maoist cadres and the ordinarily villagers who are killed in this battle hail from Adivasi communities. Thus the Adivasis – maybe one or the other and maybe in one of the three forms mentioned above – are pitted against each other and the 'conspiracy theory' of elimination fits to perfection. Khalkho<sup>2</sup> is the best example in this who lost her life for no reason, which in fact was part of a similar conspiracy and many experts connect her murder with such theories.

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<sup>1</sup>SalwaJudum was the vigilante army like group of whom many members were the surrendered Maoists. Other villagers who mostly aligned with the contractors, businessmen, politicians, spies and police informers also become members of group. They were armed by the State and they went on to create more and more problems for the local inhabitants. Later this was dissolved under strict instruction from the Supreme Court of India; however, the entire force was converted as Chhattisgarh Auxiliary Armed Police Force Act, 2011.

<sup>2</sup>MeenaKhalkho a young Adivasi school girl, who was studying in higher secondary in Surguja district. She was killed by the police in daylight under the pretext of being a Maoist cadre. A recent report of the Judicial enquiry commission proved that she had no connection was any Maoists. The investigation further said that she was an ordinary village girl (The Hitavada 2015).

In recent years the Adivasis areas of Narayanpur, Kondagoan, Bastar, Dantewada, Bijapur and Sukma are in some way or other the centrality of all discussion in the state. This is more particular after the lethal attack by Maoist on the Congress convoy on May 25, 2013 near Darbha valley. The attack killed at least 27 persons, including the founder leader of Salwa Judum, Mahendra Karma and Pradesh Congress Committee (PCC) President Nand Kumar Patel. Former central Cabinet Minister and veteran Congress leader Vidya Charan Shukla also succumbed to his injuries on June 11, 2013. A few days earlier on May 17, 2013 night in another supposed anti-Maoist combing operation eight Adivasis and a CRPF constable died in Edesmeta village in Bijapur district of Chhattisgarh. This again was a joint operation of the CRPF and district police against the alleged Maoist in which many were reportedly missing too (Bhardwaj 2013).

Incidentally it was the same district where 17 villagers were killed in an encounter a year ago. While the security forces termed it as the 'biggest Maoist encounter', almost all the dead later turned out to be innocent villagers (Bhardwaj 2013). Three years ago, in the country's worst Maoist attack ever, 75 Central Reserve Police Force (CRPF) and a state police personal were killed in an ambush in the thick Mukrana forests in Dantewada district (NDTV 2010). This is not just the singled out case where the Maoist have attacked a convoy of security forces in Chhattisgarh. On July 16, 2013 the Home Minister of Chhattisgarh government in a reply has mentioned the killing of 1181 people in Naxal violence in the state in the past six years. This includes 696 civilians, 233 policemen and 252 paramilitary troopers (Zee News 2013).

The figures quotes are official ones, however human rights groups like People's Union for Civil Liberties (PUCL) opines that it is only the tip of the iceberg. Nevertheless these continuous armed conflicts have altogether created a situation of fear and impunity and have rendered a larger number of Adivasis and other traditional communities as refugees in their own land. Thousands of people have left their villages in search of safe shelter. Bastar, one of the last frontiers of Adivasi India, is under severe threat (George 2015).

In 2005, Dantewada district of Chhattisgarh witness the birth of 'SalwaJudum' – with wide media publicity as a peace movement – aimed to combat the menace of Maoists. Most of the members were surrendered Maoist party cadres, who were armed with guns, lathis, axes, bows and arrows. The armed Judum members went on raiding villages, joined operations alongside the security forces. Suspected Naxalite sympathisers (sangham members) were beaten and brutally killed, their houses torched, and livestock looted. In several instances, the

raids continued till the entire village was cleared and all the villagers were compelled to move into SalwaJudum camps (Sundar 2010; George 2015).

Gupta (2006) reports SalwaJudum as the state's violent game of forcibly arming the Adivasis against the Maoists. The Adivasis who have refused to join the camps have been beaten and their houses burnt. She adds the incidences as a metaphor for state sponsored civil war launched by the state government, in which Adivasis are being pitted against Adivasis – cannon fodder for a failed administration.

Since the Supreme Court verdict was pronounced the government of Chhattisgarh went on appointing the SalwaJudum activists till January 2007, 4048 'Special Police Officers' (SPOs) under the Chhattisgarh Police Regulations. The Supreme Court on July 5, 2011 acknowledged it as a vigilante army and asked the Chhattisgarh government to immediately withdraw it and disarm the Adivasis. The same day the Chhattisgarh government passed the Chhattisgarh Auxiliary Armed Police Force Act, 2011 regularising all SPOs with effect from the date of court's order. In 2012 this act was challenged in the Supreme Court of India as a contempt of court (Sundar 2010).

In 2011, the Supreme Court heard the case of victims of SalwaJudum and gave clear directives to the government of Chhattisgarh that such action has undermined constitutional values, democratic right, human dignity and instructed to consider the victims of SalwaJudum militia as victims of conflict and rehabilitate them properly. As per rough estimates nearly 250000 of people have left their villages in fear and took refuge in nearby states like Andhra Pradesh, Odisha and Maharashtra. After the Supreme Court directive no concrete action has been taken (Sundar 2010).

Since 2005, the consistency and continuity of violence and counter violence has left hundreds of people caught in the middle. The Supreme Court has ordered to look at the case of all victims of the conflicts as war victims only. The Government of Chhattisgarh agreed but failed to register any FIR, which is the first level of this. The argument provided was no one had come forward to register FIR (George 2015). Adivasis are the clear losers in this entire conflict. Interestingly, the ones who have voiced against the atrocious move of the state have been implicated in various legal strangles including the invocation of draconian laws like the Chhattisgarh Special Public Security Act 2005. Perhaps human rights defenders like Soni Sori have been a victim of this nefarious design (George and Sandilya 2015).

## **Land Alienation and Adivasis Question**

Land, forests and other natural resources are not free from public debates. The question of Adivasi identity and alienation from land and resources is a major problem across India. Land being the mainstay of culture, identity and livelihood almost 90 percent of Adivasis depend upon it for their living and are closely attached in an intense emotional manner. Landlessness has increased among the Adivasis during the last one decade. The socio-economic survey reveals that Adivasi land alienation is becoming more intense. The main cause of land alienation and landlessness is land acquisition for industrial and other development projects. Nithya (2013) mentions fast growing urbanisation, establishment of industrialisation, lack of land records, administrative inefficiency, poor economic conditions, non-possession of land, delay in getting judgement, fear of police and administration, unprofessional counsel for the Adivasis, oral mortgage, indebtedness and drinking habit as the reasons of tribal land alienation. Depeasantisation, displacement, exploitation, increased poverty, fear, insecurity, lack of employment, migration, extremism, Maoism, law and order problem, direct and indirect beggary and prostitution are the major outcomes of land alienation.

Negi and Ganguly (2011) indicate that the Adivasi displacement is relatively much higher than many other social groups. Adivasi population makes up eight percent of the total population, they suffered approximately 40 to 50 percent of displacement induced by development. Available reports indicate that more than 21 million people are internally displaced populations (IDPs) due to development projects in India. Although the tribal population only makes up eight percent of the total population, more than 40 percent of the development induced displaced are tribal peoples in India. The difficulties faced by IDPs are numerous but distinct. This certainly aggravates the fundamentals of land alienation of Adivasi population across the length and breadth of India.

Though not entirely, yet a large number of questions are related with conflicts and multiple conflicts in the Adivasi zone of Bastar related with the whole question of resources. Chhattisgarh has remained as an apple in the eye of the corporate houses for long due the rich deposits of minerals as well as the richness of the bio-diverse forest eco-system. Here lies the other side of the story. While the entire fiasco on anti-Maoist operations and SalwaJudum has been carried on, in the same region without much of hue and cry another plan was being executed, where the Adivasi land was being transformed into industrial land (George: 2015).

Tata, Jindal, Essar and other industrial houses have marked their entry in Bastar. The ones who opposed these projects are targeted by the state. Lohandiguda is one of the classical examples where Adivasis who protested against Tata's land acquisition plans were beaten, implicated in fake cases, women were raped and molested, houses burnt, and forced to leave their land. The situation is that that Adivasis are caught between the armed conflict, the industrial politics of land acquisition and the HR defenders are targeted.

### **The Case of Lohandiguda**

Lohandiguda block in Bastar district is faced with threat of displacement and dispossession, where the Tata Steel plans to build a mega steel plant in the heartland of Adivasis. On June 6, 2005, Tata Steels and the Government of Chhattisgarh signed a Memorandum of Understanding (MoU) for establishment of Steel Plant (Business Standard, 2012). Accordingly the company is to set up a 5.5 metric tonne per annum (mtpa) integrated steel plant in Lohandiguda block in Bastar district of south Chhattisgarh with an investment of Rs. 1,95,000 million. The project also involves setting up a captive power plant of 625 MW (actual calculation would be 675 MW) based on coal and gas. The power generation units consist of 3x130 MW gas based and 3x120 coal fired with two backpressure turbines generating 12.5 MW power. The steel plant will produce 6 mtpa of hot metal, crude steel of 5.5 mtpa and saleable steel of 5.25 mtpa. Iron ore is to be sourced from Bailadila mines and for this conventional blast and basic oxygen furnace is to be set up (Metal Industry News 2013).

According to a newspaper report, the project would require over 2044 hectares of land (Business Standard 2012). The area required for the steel plant is some 960 hectare; the rest of the land will be used for residential quarters, ancillary units, roads, schools, hospitals, and a 625 MW captive power plant. About 585 hectare of individual land (called account holders, or 'khatadharaks' in Hindi) are earmarked for the project. The rest is controlled by the government and can be allotted directly to the Tatas on lease (Tripathi 2012). There are certain patches of land that has been undefined as in the case of most of the industrial projects.

The initial MoU was valid for three years. In 2008, the MoU got renewed for two years and later it was extended for another two years as the state government failed to give possession of land to the company after acquiring it from the villagers. The Tata Steel has deposited the required amount for land acquisition and compensation to be paid to the villagers. The

company got yet another breather when the Chhattisgarh government on July 18, 2012 renewed the MoU till 2014 (Business Standard 2012). The further extension of the MoU has not happened however an undeclared MoU is being continued.

Reports indicate that around 20000 people in 10 villages will be affected by the project. Nine of the villages are in Lohandiguda block namely Badanjee, Balar, Takraguda, Kumhali, Chindgoan, Dhuragoan, Dabpal, Paroda and Beliapal. The tenth, Sirisguda, is in Tokpal block (Tripathi, 2012). The controversy continues over agriculture land belonging to the 1707 account holders. The local administration says 80 percent of this land has been acquired, while Tata officials say that the entire compensation money has been deposited with the administration for the purpose of acquisition (Tripathi, 2012). The company has reportedly deposited Rs. 70 crores with the administration supposed to be paid as compensation to the villagers. The Bastar district administration has paid Rs. 42.07 crores to the villagers and was due to pay Rs. 27.35 crore (Business Standard 2012). This claim of payment of compensation has not been confirmed by a larger number of the villagers.

On October 12, 2009, the company and the local administration organised a public hearing on the Environmental Impact Assessment (EIA) at the proposed project site in Lohandiguda. Varun Jha, the Vice-President project in-charge of Tata Steels, attended this hearing. In the hearing company officials announced an investment of Rs. 2000 crore environmental protection and conservation as per rules, however no other details of any restoration plans were provided (George 2015). The summary of the EIA<sup>3</sup> report mentions 84 percent of land is agriculture land, while five percent is *chotejhadke jungle* (shrub cover), one percent occupied by rural settlements and public infrastructure and balance 10 percent is fallow land.

A year later, on October 12, 2010, the District Collector organised a public hearing over the project inside the Collectorate premises to keep away the affected village communities, and subsequently declared that the project had received overwhelming support from the villagers. The villagers, however, claim that both meetings were stage-managed and persons who would be actually affected were prevented from attending them. Those who attended, they allege, were people from Jagdalpur, contractors, real estate agents and others with vested interests. Prior to this, the villagers, organised a parallel public hearing in November 2009 at Badanjee

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<sup>3</sup>EIA report of Lohandiguda in Bastar. This report has been undated and accessed from the website from <http://www.enviscecb.org> See reference.

village, where the project was unanimously shot down. They sent copies of the minutes to the then Minister for Environment and Forests, Jairam Ramesh (George 2015).

Complaints were made against the illegitimate public hearing by the Collector, which not only prohibited the affected people but also proscribed the Adivasis off their legitimate space. There was no response to their complaints, and on October 22, 2010, the Environment Ministry gave clearance to the project; this clearance said that work could begin only after the Union government gave approval for the diversion of forestland. This approval was granted in March 2012 (Tripathi 2012).

Prior to this, there were several attempts to forcefully evict the people from these villages applying violent tactics. In an application before the National Human Rights Commission (NHRC), Mauria and Bhatia (2007) refer to many cases of rape, molestation, outraging modesty and harassment by the police in the Lohandiguda block. These instances occurred in two villages: Takraguda and Sirisguda between February 21-27, 2007. Both these villages are part of area to be affected by the proposed Tata Steel Plant. Here roughly 6,000 hectares of land of these Panchayats<sup>4</sup> are to be acquired. In fact the people do not have proper information or any project details. The application to the NHRC mentions of the non-settlement of grievances of the people is likely to be affected. It also categorises the unwillingness among people against government's forceful methods of land acquisition.

The instances of police excesses could be categorised under three sections: (i) rape (ii) pre-planned molestations and outraging modesty (iii) everyday harassment. In the first category is the case of Kari (20 years), wife of Lachuram. She is illiterate and mother of a child from Takraguda village under Marigudapara Panchayat. She was raped by a policeman who may have come with a full knowledge of others in his group or without their knowledge. This was on February 27, 2007 around 6 pm.

In the second category are the ten cases of molestation of women: six of these women are less than 16 years old, the youngest being only 12. All the cases are reported from Sirisguda village of Kandkipara Panchayat. There is a certain statement suggesting that what happened was a result of a pre-mediated plan. In contrast, the third instance, of Galle, depicts everyday

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<sup>4</sup> Panchayat is a village council in India, which in earlier times were mostly a handful of dominant caste people who were either nominated by the members of the same clan or by a Congress of similar caste groups. No untouchable or lower caste person had any say in it. In the post-independence period, the system has changed from selection to election, where individual have to contest attain the office.

harassment with possible intention of sexual abuse. The incident happened on February 26, 2007 between 5-6 am; when police personnel in large number entered the village. Since many men in the village were opposing the Tata project, some of them leading from the front, they were naturally the targets of the police and administration. Since they were already implicated in fraudulent many cases, search operations were normal and frequent. Due to these reasons, on seeing the police force approaching the village, the men fled to the hills, the women and children were left behind. The women and children turned the prime targets.

Besides these 10 incidences of February 26, 2007, there was another incident on February 21, 2007, which could be termed as an instance of harassment with possible intention of molestation or rape. The victim is Galle, wife of Sukram, 30 years, illiterate. On February 21, she went to the 'society' (Public Distribution System) to get her lot of rice. After buying the rice, she was returning when three policemen who were sitting by the bridge made moves towards me. From their behaviour she felt odd that they wanted to catch her. So she ran towards the fields. They chased her and stopped only when she reached the PDS shop again. It was 4.30 pm then and there were other people as well, so the policemen left (Mauria and Bhatia 2007).

After this incident, there was so much fear amongst the women that they were afraid to give their complaint to the police. Also, since the police were the aggressors they could not approach them with any degree of trust.

### **Whither Rights in Scheduled Areas<sup>5</sup>?**

Adivasi rights in Scheduled Areas have been under the scanner for a long period, particularly in the Central Indian zones of Chhattisgarh, Odisha, Madhya Pradesh, Jharkhand, Maharashtra and Telenghan, which together makes up more than 50 percent of the total Adivasi population of the country (GoI 2014B: 36). In India, Chhattisgarh has the third largest forest cover after Madhya Pradesh (77700 sq. km.), Arunachal Pradesh (67410 sq. km.) amounting to 55674 sq. km. (GoI 2014B: 49). These forest areas are mostly inhabited by Adivasi and other indigenous groups and it is the same region where one faces displacement, dispossession, under-development, poverty, and pauperisation at the altar of development and national growth.

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<sup>5</sup> Scheduled Area is defined as those regions where at least 50 percent or more of the total population hail from Scheduled Tribes. There is no legal restriction with the number of social group.

The Indian Constitution upholds Adivasi/Indigenous rights under the Fifth and Sixth Schedule. It mandates to protect the identity and rights of the Scheduled Tribes through several of its provisions as contained in Articles 15, 16, 19 (5), 23, 29, 46, 164, 343(M), 243 (ZC), 244, 275, 330, 332, 334, 335, 338-A, 339, 342 and 366 (25) besides the Fifth Schedule and Sixth Schedule appended to the Constitution. PESA synthesises in itself the spirit and mandates of two important Constitutional provisions, i.e. Articles 243 and 244 (Rath2013: 7).

### **PESA versus State**

The process of bringing all Adivasi majority areas under the Fifth Schedule of the Constitution was also taken up under the law of the land. The 73<sup>rd</sup> and the 74<sup>th</sup> amendments to the Indian Constitution aimed at it, followed by the Provisions of PESA, brought in the rays of a new model for self-governance in the Fifth Schedule areas of the country. Theoretically, it decentralised the existing approaches to land and forest governance in Adivasi domain by bringing the Gram Sabha<sup>6</sup> to the centre stage and recognised the traditional rights of tribals over ‘community resources’ – meaning a complete control over land, water, and forests rights. PESA was important not just because it provided a wide range of rights and privileges, but also it legitimised the principle of traditional Adivasi mode of relationship and management with resources as well as opened the path for future law making concerning the Adivasis of the country. Based on the guidelines laid by PESA the states were to promulgate – in fact some of the state went ahead to amend the state laws – their own laws supposedly giving rights to Adivasis over local resources.

Despite the wide range of plethora of development plans, programmes and activities initiated in the tribal areas, the majority of Scheduled tribes still live in conditions of serious deprivation and poverty. The tribal people have remained backward in all aspects of human development including education, health, nutrition, etc. Apart from socio-economic deprivation, there has been a steady erosion of traditional tribal rights and their command over resources (GoI 2008: 8). The act as such provides the leverage of Tribal Self rule upheld by the constitution. These aspects of self-rule were not actualised, despite legal promulgations, at one end whilst on the other Adivasi land was consistently converted into industrial purpose,

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<sup>6</sup> The Gram Sabha is a body consisting of all persons registered in the electoral rolls of a village or a group of villages, which elect a Panchayat. In Scheduled Area each Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and the customary mode of dispute resolution.

which was the context under which Samatha<sup>7</sup> filed a Public Interest Litigation (PIL) in the Supreme Court of India.

One important point needs a mention is thrust and level of commitments from the administrative circles. Over the years some sections of bureaucrats – whom one could assume that they want to bring changes in Adivasi lives – had been campaigning for forceful activation of PESA. The entire spirit of PESA lies in the non-intervention of bureaucracy with the Adivasi lenience to decide for them. Through the past year, some sections of government have stated that the PESA areas will see ‘an injection of speedy and aggressive development’, or that ‘these areas will be saturated with development.’ Even this approach suggests continuing bureaucratic control and ignores the principles of self-governance and community control over resources, as enshrined in PESA and FRA. In the current context of the people’s mistrust of the state, the term ‘aggressive development’ needs to be abandoned, and if not, then clearly defined for the consent of the community.

### **The Samatha Judgement**

The Samatha judgment, delivered in the context of Andhra Pradesh Scheduled Area Land Transfer Regulation 1959, held that private mining industries are a non-tribal ‘person’ therefore, mining leases to private industries in tribal lands of Scheduled Areas are null and void and any transfer of land to a non-tribal was prohibited. The judgment went on to state that in Scheduled Areas, every Gram Sabha should prevent alienation of land, and minerals of these areas should be exploited by the tribal people themselves (GoI 2014B: 252). The judgement was later extended to the whole of India’s Scheduled Areas.

### **PESA in Lohandiguda**

A sizeable part of Bastar comes within the Fifth Schedule where PESA is to be assumed to be in place. This act in its very spirit underlines the centrality of the Gram Sabha and its consent as a pre-requisite for any land acquisition in such regions (George: 2015). Whatever the country’s law shouts, perhaps nothing works in Bastar. In Lohandiguda the district administration has completely dismissed the rights of the Gram Sabha, where it consistently passed resolutions against the Tata Steel plant. Technically once the Gram Sabha resolution objects a project, there is no requirement for going ahead with the project plan. Disregarding

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<sup>7</sup>Samatha is an NGO working on mining issues in Andhra Pradesh of India.

the resolutions of the Gram Sabha, the district went ahead with nefarious plan to favour the proposed Steel Plant and also to hoodwink the people.

The district administration flouted all legal promulgations inscribed in PESA and pressurised the elected Panchayat heads to re-organise the Gram Sabhas in affected villages. Subsequently under severe pressure, Gram Sabhas were held in eight Panchayats on July 20, 2006, and another two on August 2, 2006 in an atmosphere that was far from being free and fearless. In fact, these Sabhas were held under duress in the coercive presence of a large number of police personnel as well as administrative staff including the District Collector, Sub-Divisional Magistrate and the Superintendent of Police. In spite of the coercion, the people in these Panchayats put forward 13 demands on which they wanted further discussion with the government before taking a final decision (Mauria and Bhatia 2007).

However, the government did nothing on these lines in the following six-seven months. This made the Sarpanchs (elected head of the panchayat) of six Panchayats declare that they would reconvene the Gram Sabhas on February 24, 2007. This challenged the administration leading to an escalation of police action in these villages. It turned more frequent, lawless, and violent. Prior to the Gram Sabhas in 2006, 60 or so of the most vocal leaders, including men and women, of these Panchayats were arrested. Some of them stayed up for two months in prison (Mauria and Bhatia 2007). This illegal detention and subsequent feigned criminal charges not only attempted to weave fear and terror amidst the Adivasi masses, but also endeavoured to criminalise the masses. The process by which it was done has a deprecatory predicament.

False charges were clamped on some leaders, their property confiscated or destroyed. By 2006 end, a police camp was set up in Sirisguda, which was regarded as a rebel village to the upcoming power plant. As a result, most of the men were forced to flee their homes and stay away in order to evade arrests and harassment for 'crimes' they had not committed. With men absent from the village, the women had to manage their homes, children, cattle, as well as the fields on their own. In fact, women single-handedly did the harvest in the winter of 2006. Soon the women became the targets in a pre-planned manner clearly to punish them, their men, and their communities for daring to exercise a right – a right to say 'No' to the plans of establishing the Tata plant – given to them by the laws of the land (Mauria and Bhatia 2007).

## **Other instances of PESA violations in Chhattisgarh**

### **Nagarnar struggle in North Bastar**

This is not the singled out case in Lohandiguda alone, it is the same across the entire state with minerals. Lohandiguda is only the tip of the iceberg. Right after the creation of the new state of Chhattisgarh there has been several attempts of the same kind. Nagarnar is another instance where in early 2000s, instead of yielding and executing the decisions of the Gram Sabha resolutions, a forceful disturbance was created by administration and police. Villagers were chased, hunted, arrested, their Gram Sabha resolutions disowned, and subjected to extreme violence of police, contract thugs and political party's hooligans. The proceeding register of the Panchayat was forcefully taken and the resolutions were torn off in the presence of government officials subjected to destruction of the Gram Sabha proceeding register was seen in Nagarnar in early 2000s. Here the villagers were even victims to the bullets of the police force.

### **Raoghat Struggle in North Bastar**

Raoghat is another mining site in North Bastar. This is not the only one in this region. According to the website of Mineral Resource Department of the State, there are thirteen existing mines – including five iron ore mines – in Kanker and Raoghat would be the fourteenth.<sup>8</sup> The Bhilai Steel Plant (BSP) iron-ore mine had led to massive deforestation in the mining town of Dalli-Rajhara, destroyed fields of grains and corn, led to land seizure has been eyeing on Raoghat iron-ore deposit for over a decade and half. Ever since the Mahamaya and Rajhara mines began to dry BSP's pointer on Raoghat turned more intense, which become the centre of opposition of the local people. Gram Sabhas resolutions were passed against it.

The project considered not only the mining of iron-ore, but a 100 km. railway line would run between Dalli-Rajhara and Raoghat of which the work has already began and 115 families have been already displaced. The local villagers organised under the banner of Raoghat Rail SangarshSamiti (Struggle Committee against Raoghat Railway Project) with the leadership of BadriGawde. He organised the villages, motivated them to bring resolutions in their respective Gram Sabhas, holding public meetings, facilitating study trips of academics, tying-up with Chhattisgarh's unruly bunch, the mine workers, the Sarpanchs and also led the struggle from the front (Ghosh 2014).

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<sup>8</sup> Based on the information from the website of Mineral Resource Department, Government of Chhattisgarh. See References.

It is believed that Raoghat hills have around 7.4 billion tonnes of iron-ore deposit. The project began in 2006 and it is the time coincides with the aggressive march of SalwaJudum in Bastar. Over ten thousand Adivasis took out a massive rally in Antagarh to register their strong opposition to the proposed mining project, however met with repressive measures. The Adivasis are opposing the project since 3278 hectare of forest would completely be destroyed, beside the larger portions of adjoining forest cover. River Mendhiki and several other perennial brooks and natural water sources would get contaminated. Despoliation of soil and destruction of cultivable land would be the end product left back for them. Further there are cultural reasons as Adivasis believe the mountains to be part of their ancestry. NECO Jaiswaals, a private company, has already applied for mining lease near Chargoan area, which would displace the entire Adivasi population from thirteen villages.

The local people are opposing the project through all legal means, only to be heard by the power centre as well as administrative machinery. The leader of this movement, Gawde was picked up on January 24, 2014 and has been languishing in Raipur Central Jail since then. He was slapped with draconian Public Security Act, and other sections such as war against the state under the fictitious drama of being a Maoist. The story of Gawde aligns with that of Sori, Kodapi, and Kunjam<sup>9</sup> and many others who raise the question of Adivasi rights.

### **HasdeoArand and Dharamjaigarh forest movement of Surguja, Korba and Raigarh**

Two more mining blocks in north Chhattisgarh are at the verge of being handed over to the corporate houses. One is the HasdeoArand and the other is the Dharamjaigarh forest, which falls in Surguja, Korba and Raigarh districts. Twenty Gram Sabhas, applying their legitimate rights under PESA, unanimously passed resolutions against the any mining activity – particularly when the two areas are known for fragile ecology and rich biodiversity. Here again all attempts are made to vigorously push for the allotment. Some of the key points of their resolutions are –

- They are opposed to mining in the region and will not provide any consent to mining operation.
- The region is extremely rich in biodiversity and the communities have conserved it for centuries. The Adivasis of this region share a symbiotic relation with forestsand

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<sup>9</sup> Both LingaramKodapi and KopaKunjam were arrested earlier under similar allegation of a Maoist but later released on bail from Supreme Court.

the entire livelihood, identity and culture is dependent on these forests. Therefore they are determined to prevent any damage to the forests.

- Prior experiences of mining in the region and adjacent regions have been devastating wherein many villagers had to be displaced with limited rehabilitation, several people lost livelihood, destruction of forests and the air, water and soil got contaminated.
- The settlement of rights under FRA<sup>10</sup> remains abysmally poor with consistent violations of several provisions. In the absence of such recognition any mining activity would severely compromise their rights over the forestland.<sup>11</sup>

### **Tamnar movement in Raigarh**

Similar attempts have been observed across the state. Gare village of Tamnar block – which comes under the Scheduled Area of Raigarh district, the Gram Sabha passed several resolutions against the allotment of coal mines to Jindal. People came out in hundreds against the decision to allot coal block to the Jindals. Despite registering their strong disagreement in different attempts of public hearing and several Gram Sabha resolutions, the government went on to allot it by clearing the EIA and all other legal formalities. However the villagers did not allow the Jindal to enter the village premises. Inspired by this other villages in the vicinity such as Meenupara, Satta, Kharra, Marwadumar, Lalpur, Jarhidihi, Hinhjar, Urva and Pelma also passed similar resolutions and joined hands in the struggles against the usurpation of land and forest patches by the Company. Finally with the intervention of the Supreme Court in 2014, the Prospecting License (PL) of Jindals got cancelled. Recent reports says that at present South Eastern Coalfields Limited (SECL) and National Thermal Power Corporation Limited (commonly known as NTPC) officials have been scouting the village. The intentions of such visits are yet unclear.<sup>12</sup>

### **Katghora struggle of Raigarh**

In Katghora block of Raigarh villages such as Baraoudh, Jampali, Kurmkela and Nawapara initially resisted through resolutions and other means but finally had fallen prey to the mounting pressure based on the application of fear tactics. Though the Gram Sabha passed a resolution against the allocation of coal mines, it finally issues the No Objection Certificate

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<sup>10</sup> The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act 2006 is commonly known as Forest Rights Act shortly FRA.

<sup>11</sup> Based on a conversation with community members and activists.

<sup>12</sup> This information is based on the discussion with activists working in Tamnar area of Raigarh, particularly Harihar Patel, DigreeChauhan and others.

(NOC) to the NTPC. Fear tactics works very well. However at present in a newly arisen context and problems, people have come back to struggle path for the rights.

### **FRA and Adivasi Rights**

In the post-1990 phase, FRA was only the second major Act after PESA that was mostly related with the Adivasi population of India. These two Acts were not just important for their Adivasi connect, rather they also were the first time that Indian State and democracy acknowledged the historical wrongs against her indigenous population. The enactment of the FRA has been a very important move in taking away the burden of illegality from the shoulders of Adivasis, and other forest dwelling and dependent communities. The Indian Forest Act, 1927 and its predecessor Act of 1878 vested control over the forest resources in the state. Forest area covers 23 percent of land mass and over the years; forest communities have been treated as encroachers and their activities in forest areas as ‘forest offences’ (GoI 2014B: 308).

While PESA extended the 73<sup>rd</sup> constitutional amendment to the Fifth Schedule areas and made important provisions for the autonomous Gram Sabhas, FRA connected the forest areas of the whole country to provide individual property rights over ‘encroached’ forest land and community property rights over forest land and its resources. It also has important provisions for the conservation of wildlife. Both these laws are commonly termed as ‘progressive’ laws and came into existence only after long struggle by Adivasi/ Indigenous people for nearly five decades.

### **Weak Implementation of FRA**

Several committees have pointed the weak implementation of the FRA. In 2010, the Ministry of Tribal Affairs (MoTA) and Ministry of Environment and Forests jointly constituted a committee to study the factors that aid or impede the implementation of the law and recommend necessary policy changes. The joint committee’s observation and recommendations are extremely valid. They are:

- The implementation of the FRA has been poor, and therefore it’s potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved.
- There have been serious flaws in many states relating to the formation of the Forest Rights Committee (FRC) at the grassroots level, which has the crucial role of

assisting the Gram Sabha (GS) in determining the claims from individuals by receiving, consolidating and verifying them on the ground.

- Several states have utilised GPS technology for plot delineation. It is recommended that a special set of guidelines need to be worked out for the proper use of spatial technology in the delineation, location, and status verification of claims filed, to ensure reliability, objectivity and transparency.
- The FRA stipulates that forest-dwelling Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs) are not to be evicted or removed from forestland under their occupation till the process of recognition and verification of their rights is complete. The committee members found that this provision of the Act has been violated, FRA claimants were evicted even as their claims were pending with no notice.
- The relocation from Protected Areas including Tiger Reserves without having completed the procedures under the FRA was identified as a gross violation of the FRA.
- Though the FRA does not and should not provide any deadline for completion of the process, states should expedite recognition of rights within an appropriate time frame, which is to be decided in consultation with the forest dwellers and civil society, so that governments do not slacken off on implementation.
- The MoTA should issue a clarification that OTFDs as defined under the FRA are all those who can prove seventy-five years of residence in the area (not necessarily on the plot being claimed), and dependence on the forestland as of December, 2005. The MoTA should also clarify what kinds of evidences may be used for such proof and how these are to be made available to the villagers. MoTA should also clarify that no disqualifications on the basis of possession of additional revenue land or jobs, or location of residence on revenue land, etc. are permissible under the FRA.
- State governments should review their State Level Management Committees, District Level Committees, and Sub-Divisional Level Committees, regarding their composition, functioning, public interface, and transparency, and issue directions for necessary correctives in each of these institutions.
- Most states have concentrated almost entirely on implementing the provisions for individual forest rights (IFR).
- Claims are being rejected without assigning reasons, or based on wrong interpretation of the 'OTFD' definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (lacunae which only require the claim to be referred back

to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated.

- Section 3 (1) (m) of the FRA, regarding the rights of persons illegally displaced or evicted by development projects without proper compensation, has not been implemented at all.

The term 'individual forest rights' is not actually used in the FRA, it has found its way to official records and common parlance to denote rights to forest land with individual tenure. Section 3 of the Act includes: 'right to hold and live in the forest land under the individual and common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other Traditional Forest Dwellers' (GoI 2014B: 309-11).

### **FRA claims versus settlement in Chhattisgarh**

In Chhattisgarh as of January 31, 2014, 756062 claims have been made by the forest dwellers of which 306184 titles have been distributed and 423149 applications have been rejected. In this manner 729333 cases of claims have been disposed while 26729 are yet to be considered (GoI 2014A). There is no further detailed bifurcation on the number of individual and community claims received, titles distributed, rejected and cases disposed. While the government has been self-adoring for clearing 96 percent of claims, the fact that 56 percent has been dismissed by the government is not taken as a serious matter. On one hand, there is an absence of the procedure stipulated in the FRA, on the other, strict adherence to conditions not even required or permitted under the Act are used to disregard claims. The promulgation of FRA has also made its impact on PESA and it appears that FRA has taken over PESA so far the larger attention both at government and non-government level is concerned

### **Spreading Rumours around FRA**

There are many village in Chhattisgarh where people belong to Scheduled Caste have put their claims that have been rejected. Many of these rejections were without even looking into the claim application. Further, in those villages, there is tense situation between the Adivasis and Dalits, particularly in the context of claims and counter claims. The officials are also spreading misinformation to create tension between the two groups. One of the rumours is

that the claims under FRA by the non-Adivasis are a menace to the Adivasis. The non-Adivasis, particularly the Dalits, will usurp the land that legitimately belongs to Adivasis and distribute they would sell it to others who have no connection with the forests. In some pockets, where huge chunk of forest land has been illegally held by non-Adivasi traders, contractors and business class, the story is the reverse. Here the rumour is that the land hitherto held by the non-Adivasis would be taken away and given to Adivasis. For this the forest department will clear all the forests, they have been protecting, and turn them into farmlands for the Adivasis. Now both Adivasis and Dalits are under attack of some or the other powerful sections. This is yet another unfortunate illustration of how the FRA, dubbed an instrument to correct the 'historical injustices' meted out to forest communities, is instead being used as a tool of oppression, constructing fear and intimidation for raising the issue of forest rights.

### **Tussle between PESA and FRA**

There exists a clear tussle between the two Adivasi laws at present. Ideally the promulgation of FRA should have strengthened PESA in terms of affirming Adivasi rights over forest land, preventing land alienation, defining development of Adivasis from a different perspective than the hitherto idea of the so-called middle classed mainstream and thereby creating space for national development. While it is ironical that PESA lost the focus it used to get earlier, after the entry of FRA, more unfortunate is the fact that the neither government has been sincere in implementing PESA in its letter and spirit, nor has there been a massive effort on the part of the civil society to chase the government for this. This is chiefly because FRA has been advantageous in a number of ways, particularly in terms of ensuring individual benefits although the broader and diverse applicability of PESA is not found in the FRA (Rath 2013: 1).

Two major developments triggered the government action on Adivasi questions during the past two decades. One was the mounting pressure of Adivasi self-rule question, which led to the enactment of PESA and second was the growing consciousness of rights of forest patches that prompted to the making of FRA. While Samatha judgment opened the scope and expanded the plank of both PESA and FRA the rise of corporate loot over mineral and forest resources reduced the stature of both these laws. It turned out to be puppets in the hands of the state, political segments and power brokers in each locality. Maoism and the counter Maoist operation only came up as an eye-washer.

One can very well see the game played between the Centre and the states on this issue : the Centre continues to ask the states for proper implementation of PESA, and the states continue to reply that they have already done it though the fact may be quite otherwise. It is good to know that a process has been started to amend PESA so as to help it overcome many of the legal limitations, but the pace of such positive developments has been very slow and hence not so encouraging. Although the Ministry of Panchayati Raj once clearly wrote to the states that rise of Maoist extremism was partly because PESA was not implemented properly, the concerned politicians and bureaucrats in power seem to be more serious about planning for anti-Maoist operations than implementing PESA sincerely. While this fallacy continues on the part of government, another side of the reality is the limitations of the actual capacity of the Gram Sabha and PRIs at the field level continues to be a factor to be considered while planning for this implementation. As such a very practical approach to PESA is also necessary apart from sincere and assiduous efforts (Rath 2013: 1).

Implementation of the FRA is not void of questions. The fact that FRA has to pass through the Gram Sabha is an important fact that has been either not known or ignored by the administration. The challenge is to activate both FRA and PESA and the current interpretation and implementation formats in conflict zones like Bastar raises serious questions. Such a process will not be helpful in attaining the desired results.

### **Concluding Notes**

Bastar is entangled between the State, Corporates, Maoists and Adivasis. While the Adivasis still strive to avail the legitimate rights in accordance with the law of the land, the Maoist are engaged in a war with the state and the state in a counter-war. In this entire war and counter-war, it appears that the corporate houses would emerge as the winner while the Adivasis would end up as the loser.

The controversy surrounding Raoghat and Lohandiguda (or for that matter any other projects) have never emerged in any circles – including policy makers, administrators, political parties, media, academicians, professionals, judiciary, civil society and human rights – as a question of Adivasi human rights upheld by the Constitution, PESA, FRA, land tenures and international law, rather it got entwined in the Maoist conflict. The coincidence of June 2005 for the signing of the MoU with Tata Steel and the intensification of Raoghat project strikes well with SalwaJudum. One cannot simply buy that these were just accidental. It seems to have a purposeful logic.

The application of police, security forces, SalwaJudum in Bastar region at one end and the open invitation to the industrial houses appears as the intertwined features of the same aspect. Perhaps they are the two sides of the same coin, which synthesise the exploitation of natural resources through the elimination of Adivasis. Violation of human rights would not count anywhere as it is believed that some people would have to pay the price or sacrifice themselves in the name of 'National Development.' Therefore such violations would be considered only as the natural by-products of development and one would be advised not to raise too many questions.

All these contexts have further deteriorated the situation with new and multiple conflicts. Bastar has also been witnessing the consistent resistance to violations. So did the level of repression multiplied paramount and now it is more visible day after day. The conflict is thus turning sharper. The question comes back is why is there an attempt to weaken the Adivasi people all through these efforts, take away their land, transfer the land to industrial house, breaking cultures, the rigorous application of anti-Adivasi laws, non-implementation of pro-Adivasi laws, implicating those who attempt to exercise their democratic rights (or raise voices of dissent) in fake cases, throw them behind the bars as Maoists or extremists, raped, tortured, killed, ousted, encountered, etc. One needs to find answer to these questions.

In this rush, there are hundreds of Soris, Khalkhos, Kodapis and Kunjams and many other unheard names yet to be identified. Victims of armed conflict in Bastar suffer from excessive violations of human rights under Indian laws and international humanitarian law. Though the Constitution under fundamental rights establishes these rights categorically, it has been swept under the carpet in most of the Adivasi regions of India. Various other laws have sections and clauses to uphold the human rights of Adivasis, yet what remains in their baggage is only a whole set of miseries.

The damages not only include individual families and villages but there is an entire breakdown of trust within the villages – dilapidation of the community system, cultural injuries (local festivals have almost stopped, village markets and fairs taken over by outsiders), dysfunctional administrative machinery including Gram Sabhas under PESA and the justice delivery mechanism – where the normal procedures of FIR registration, investigation and prosecution has collapsed. Alongside these the State has to enter into a serious process to revisit development based on mass industrialisation, which creates land

alienation, cultural alienation, depletion of forest, loss of bio-diverse zones, erosion of natural vegetation, and contamination of groundwater.

The entire theory of development seems to be banking on the belief that Adivasis have nothing valid with them, no education, no knowledge, no wisdom, no respect, no big names, no fame, no civility – just nothing and therefore they have no culture or civilisation. This antagonistic approach of the state has created much of the troubles for the Adivasis. Thus the plunder of resources has a rationale of development. However, this cannot be subscribed to as it stands today. Community rights over these resources have to be the prime agenda in the long run. Anything else would lead to mass-scale Adivasi genocide in south Chhattisgarh – one of the last frontiers of Adivasi India.

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