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Celebrating World Environment Day Challenges of Environmental Protection in India

Editorial team

Ever since the Union Carbide - Bhopal gas leak tragedy of 1984, there has been heightened awareness amongst people about the dangers of industrial accidents, environmental pollution, ecological degradation, habitat destruction and their combined impact on local flora and fauna, communities and nature itself. Even 31 years after the horrific Bhopal accident, environmental justice still evades the thousand of gas leak survivors who have literally been left to fend for themselves while none of the officials involved with running the Union Carbide plant or negligent officials have been brought to book.

The sheer magnitude of the Bhopal tragedy compelled the Government to pass the 'Environment Protection Act, 1986' and a slew of other legislations. The total ineffectiveness of the environmental protection laws coupled with sense of disregard for the law and sense of impunity of industrial units to respect environment and ecology and official apathy, indifference and many times collusion of officials by way of inaction and unwillingness to exercise their powers against errant industries can be gauged by the huge number of cases filed in High Courts and the Supreme Courts, which led to the formation first of Green Benches in the High Courts and subsequently to the setting up of the National Green Tribunals in Delhi and other regions.

The state of environmental protection in India today is best summed by the Supreme Court in Indian Council for Enviro-Legal Action vs. Union of India (1996) which very poignantly pointed out, "... It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialisation and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings-for that matter, for anything else. And the law seems to have been helpless. Systemic defects? It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregard will never be visited upon them-particularly, if they are men with means. Strong words indeed-but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us."

The reality of environmental protection today, in 2015, is a lot grimmer. Apart from massive industrial projects - thermal and nuclear plants, manufacturing and chemical complexes, mines, IT complexes, the list is endless including scores of SEZs - numerous government projects ranging

from big dams, to highway projects, sanctuaries and wildlife parks, have turned lakhs of Indians into one of the biggest concentration of 'environmental refugees'. Highly contaminated and devastated water sources, decimated forests, plundered common resources, poisoned fields, development process has been more destructive, than sustainable.

The scale of environmental degradation is no longer conjecture. Climate change is a fact known to people across India, experienced through changed monsoon and weather patterns. Yet successive Governments, both in the states as also in the centre, who are actually responsible for the acute environmental crisis by failure to implement environmental protection laws, actually eye even the elementary environmental protection offered by the present laws, as the major obstacle preventing India from becoming a economic powerhouse. Corporate interests and corporate-controlled media form a natural ally whipping up a campaign demanding the scrapping of all environmental protection measures and laws, including doing away with 'Public Hearings' before giving environmental clearances for projects, and Gram Sabha resolutions for land acquisition or forest act clearance and so on.

It is in this context that we need to view the recent announcement of the Modi Government that 2015-16 will be the year of 'Ease of Business'

with the slogan "**From Red Tape to Red Carpet**". What will this mean to implementation of environmental protection laws in India? Will the existing laws be jettisoned? Recast? Diluted? What should we, as citizens, do to protect our fundamental rights to clean water, air, environment, well being and right to live a dignified life?

It will be useful here to remind ourselves that 'environmental justice' will be achieved only when all persons in India, irrespective of their backgrounds in terms of caste, class, community, ethnicity, gender, age, region, language and other differences, are able to enjoy the same degree of protection from health, environmental and ecological hazards and enjoy equal access to decision making process and institutions involved in the formulation of laws and policies, all of which will help them to lead healthy, dignified, meaningful lives. The essential principles of this process was outlined by the Supreme Court which explained, "The inadequacies of science is the real basis that has led to the precautionary principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible". (1999).

June 5th, every year since 1972, has been celebrated globally as the 'World Environment Day'. The theme for 2015 is "**Seven Billion Dreams. One Planet. Consume with Care**". The UNEP document

explains the theme pointing out that "The well-being of humanity, the environment, and the functioning of the economy, ultimately depend upon the responsible management of the planet's natural resources ... Living within planetary boundaries is the most promising strategy for ensuring a healthy future. Human prosperity need not cost the earth. Living sustainably is about doing more and better with less".

We dedicate the June edition of the PUCL Bulletin to environmental protection. We requested a number of distinguished environmentalists to write special articles for the Bulletin. The lead article is written by Kanchi Kohli who highlights the difficulties in accessing and implementing environmental protection laws and outlines the challenge before the people of India for environmental protection. Pandurang Hegde, from the Appiko-Chipko movement in Karnataka writes about the issues of the Western Ghats and Rohit Prajapati outlines the environmental issues underlying the 'Statue of Unity' project being pushed by the Gujarat and Central governments. We will be carrying some more articles on water rights campaign, Swachh Bharat campaign and other crucial environmental challenges in future issues of the 'Bulletin'.

We are starting a web-dialogue discussion with our readers and members in our new website www.pucl.net. We invite our readers to write back to us and participate in the discussions. - Editorial Team □

Looking out for Environment Justice

Kanchi Kohli*

"This place is not for you Madam. Better you don't speak"; spoke a husky voice behind me as I began depositing at a 'Public Hearing' for the expansion of a Sponge Iron plant in Raigarh, Chhatisgarh. This was not an official voice or a voice of reason, so I continued to make my submission at this legal forum mandated under the Environment

Impact Assessment (EIA) notification, 2006.

That was then. But, I never thought this localized experience almost ten years back would keep coming back to me so often, in different contexts, all across the country. If you find yourself battling for principles of natural justice, restricting the rampant and facilitated land

conversions in favour of industry, countering instances of large-scale livelihood loss, the "anti-development" tag often follows suit. Where then is the place for any negotiation or a conversation to reconcile different points of view? This is especially so, when the current Finance Minister in a recent interview clarified openly that

second year of the government under Prime Minister Modi, is dedicated to tax reforms and ease of doing business in the country. How then would this reconcile with the Environment Minister's refrain of development without destruction? Or is that passé now?

"Ease of doing business" is not without its repercussions. By inviting investments in industry, infrastructure development and power generation, the government has ensured that more and more areas in the country will be opened up for these activities, under any circumstances. This when the country is already replete with narratives of ravaged landscapes, polluted rivers, displaced homes and decades of neglect both by the government and the corporations and lack of rehabilitation of project evicted communities even after 50+ years of the start of industrial projects.

The living histories of fishing shelters around Kandla port or the villages living with coalmines and power plants in Singrauli are testimonies that these are forgotten places - used, tapped and left to their fate. The newer contests in Jagatsinghpur (Odisha), Dzongu (Sikkim), Korba-Sarguja (Chhattisgarh), Mundra (Gujarat), Jaitapur (Maharashtra) and many more are contemporary accounts of why people don't want to give up their homes, habitats, livelihoods and at the same time stand up for the environment they depend on. But in all, they bring out clearly what the undeterred quest of industrial and infrastructure expansion and growth can do to places. Poor living conditions with water contamination, depletion of ground water, no financial security, poor health facilities, lack of access to government schemes are only a few realities. This along with people being stuck between not finding jobs in the industrial complex and don't have access to the forest, farms, grasslands or fishing grounds they

once worked on. Where they do, the land is uncultivable, forest denuded or fish catch dismal.

What is spoken about as "ease of business today" was mildly termed as strategic, economic and political reasons when project after project was granted approval by the ministry of environment, when the UPA government was in power. Setting up of extra constitutional bodies like Cabinet Committee on Investments (CCI) and their instructions to approve projects of national importance or critical for growth had become part of everyday business. When the approval for diverting forests in favour of Mahan and Chhatrasal coal blocks in Madhya Pradesh was granted, the then Minister Environment, laid it out thick in the file nothings as to what the pressures of granting approval were. The reason for not waiting for critical ecological and hydrological studies was because a specialized Group of Ministers had directed the ministry to expedite the approval for the mines.

And this is when another voice, knocks at my doorstep. This time from Mundra in Kutch district of Gujarat. At a discussion when we were trying to understand the length and breadth of environment regulation in India; a simple question came my way? "So, sister... what if the government decides to just do away with all these laws. What's going to be our recourse?"

Dilutions and reforms to environmental laws and regulations in the country had begun a while back when the National Environment Policy (NEP) was put into place and the Environment Impact Assessment (EIA) notification was re-engineered, both in 2006. Despite widespread opposition the notification was promulgated one day before it was to expire. Since then, the process of granting environment clearances has gathered newer questions. Public hearing is now mere consultative exercise to rectify

technical assessments and the appraisal process remains even more opaque.

These laws have continued to be tools in the hands of environment and human rights organisations that are also trying to seek remedies from within the fractured framework or as an ally of a localized struggle. Holding the administration accountable, questioning the scientific experts and appealing for judicial redress have been some spaces that these laws have offered. In the last one year, there have been a series of changes in the regulatory processes for forest and environmental approvals. This, along with the media hype that environment regulations are delaying project implementation and thereby impeding growth, has made issues of environment justice, industry's favourite punching bag. Ironically it was the same justification, which was used when the NEP and the new EIA notification came into place in 2006. Throughout the UPA government's second term, the media had helped term environmental issues as green terror.

So, the new changes in environment laws are towards reducing the power to question, by officially appointed experts and participation by affected people. Interestingly, the ministry of environment's achievements list (as on January 2014) appears to be an assurance note for ease of doing business. At the same time the existing clauses requiring gram sabha consent as part of forest diversion processes or the land acquisition law have either already been axed or are under serious threat.

A few months after the NDA government took charge, on 29th August, 2014 a high level committee under the chairmanship of former Cabinet Secretary, TSR Subramanian was set up to review six major environmental laws, viz., Environment (Protection) Act, 1986; Forest (Conservation) Act, 1980;

Wildlife (Protection) Act, 1972; The Water (Prevention and Control of Pollution) Act, 1974; and The Air (Prevention and Control of Pollution) Act, 1981. The Committee submitted its report after a three month review process and suggested a range of reforms that far from allay apprehensions that environment justice might not be on the government's priority. While the report acknowledges principles of precaution and inter-generational equity, it quickly moves to recommendations which seek to reduce public participation, make judicial remedy more laborious and push for scientific expertise in deciding problems which affect millions. The one big solution remains setting up of a new institutional framework, which continues to inherit regulatory inefficiencies. The Committee introduces utmost 'good faith' as a principle wherein companies give an undertaking against non-compliance; the vacuity of this

suggestion is exposed when we notice that the Committee offers inadequate remedies in form of fines and technology driven monitoring on how to deal with errant companies. This is especially a problem for those that have enjoyed the complete impunity and fearlessness in violating legal clauses and clearance conditions. Not surprisingly, this is despite written submissions and formal engagements with the committee, which have also pointed out that the primary objective of environment laws is to safeguard the environment and people's lives. Any review process, though desired should not then be retrograde in nature.

In March 2015, I had written in Civil Society Magazine that "in this continuous jostle of power and people, courts and judgments, decisions and resolutions, so many small and big battles are being fought. Each, in its own way, will not just transform landscapes but will

leave behind a telling tale of whose resistance won and whose persistence lost." Even as I hold that thought, I cannot help adding a few more.

When the state machinery fails to safeguard people's lives, livelihoods and ecological habitats, affected people use their agency and gather together in big and small numbers to resist the change being pushed on to them. Such resistance is most often perceived as being oppositional in nature. But the same word can also mean withstanding. And for that we need to hold our ground. Where we're floundering, we need to seek new allies; where we're strong, share our strategies. Once we've won, set eyes on the new challenge, and if there is a loss, understand why, to get back in. There is no choice but to stay in, and up our game.

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Decimating the Western Ghats Pandurang Hegde*

Western Ghats is at the center of debate in six south Indian States. The main reason is the scientific report submitted by Prof Madhav Gadgil, as Chairman of Western Ghat Expert Ecology Panel(WGEEP). Bowing down to the pressure of Save Western Ghat Movement, a peoples' movement to conserve the hill region running parallel to west coast in south India the Ministry of Environment and Forests, Government of India appointed the WGEEP to study the conservation issues and recommend the measures to be undertaken to preserve these fragile ecosystems.

The most shocking aspect of the debate is that MoEF tried to bury the Gadgil Report. Though it was submitted to MoEF in 2011 with the request to share the findings with state governments and translate the

document in local languages, the Union ministry tried legal measures to block the report being made public saying that "it is against the national interest". It was only through the RTI that the GOI was asked by the High Court to make it available to the common people. Thus, a scientific report prepared by an internationally renowned ecologist was perceived as a threat to the national interest. Both the political and bureaucratic nexus joined hands to suppress the report that threatened vested interest.

Why are these hill ranges so special? After the Amazon in South America, it is the Western Ghats that is the girdle of the earth to maintain ecological balance, invoke monsoons and provide a cushion to climate change. They are the lungs of humanity, having the capacity and resilience to adapt to global

warming. This narrow strip of 1700 km from Gujarat to Kanyakumari in Tamil Nadu is an unique evolutionary laboratory, still at work. As a gateway to monsoons the tropical forests pull the strong oceanic currents to offload their first showers in the land mass.

Older than Himalaya, it is one of the 18 biodiversity hotspots in the world. It is replete with endemic species of plants and animals. It is home to 4050 type of plants, 121 species of frogs, 508 species of birds, 6 species of turtles, 87 species of snakes and a variety of large mammals. There are medicinal plants that can cure cancer, treat obesity and have the prospect of being a source for new drugs. New species are discovered every day. These mountain ranges are the catchments of all the rivers that flow in South India, like Cavery, Krishna, Godavari and Tungabhadra. It

provides water security to the south Indian peninsula. Similarly, it helps irrigate the crops through numerous dams built across these rivers. The right for clean air and water and a healthy environment for millions of people in south India are feasible only through conservation of the mountain ranges of Western Ghats. Realising the importance of Western Ghats, Gadgil Committee suggested that in addition to the Environmental Laws and Wildlife Protection Acts, there is urgent need to set up Ecologically Sensitive Areas (ESA), to prevent further degradation of the Western Ghats. Gadgil emphasized the need to evolve these ESA through Gram Sabha, the first layer of the decentralized village level institution. With only 10 per cent of the original forests left in this region, he suggested measures to stop further decimation through involvement of local people.

However, the political nexus that benefited from the ongoing destruction sensed the threat to their existence and launched a sustained campaign against the Gadgil Report, calling it anti people and anti development. The First salvo was fired by the forest encroachers lobby in Kerala, and then all the states followed suit. Irrespective of party affiliations, the state governments rejected Gadgil Report. They lobbied with GOI to appoint another High Level Working Group headed by Dr Kasturirangan. Obviously, this committee was very much willing to water down the restrictions and

allow destructive activities to continue. Unfortunately, even this watered down report has been rejected by almost all state governments. They do not want any restrictions on ongoing destructive process in Western Ghats.

As the issue of Western Ghats concerns six states, Gujarat, Goa, Maharashtra, Karnataka, Kerala and Tamil Nadu, it is imperative that all these state governments and the union government work together to conserve this fragile ecosystem, on which the survival of millions of people depend. Since the protection of wildlife and management of forests is in the Concurrent List in Schedule VII of the Constitution of India, both Union Government and State governments have to co-ordinate the efforts to preserve this unique ecosystem. Nevertheless, in reality, both the central and state governments are determined to see that they do not bring any policy level changes to stop the on going destructive activities in the region. The recent surge in opening up of the mining and five star tourism along the coast indicates the priority of central government in assisting the corporate to exploit the natural resources.

The unbridled corporate greed for the resources is visible in entire belt of Western Ghats. It may be the virgin coasts, on which they want to build huge ports, six lane highways along the west coast, power, mining projects, nuclear power plants, locating the industries and large infrastructure projects. Almost all of

them violate the law of the land and brazenly destroy the remaining forests, pollute the rivers, adversely impact the livelihood base of the common people.

Supreme Court has emphasized the need for scientific inputs before the decisions on environment are made, recognizing the need to protect environment for its intrinsic value and not potential benefit to humans. In the case of Gadgil report, it provides scientific inputs. Ironically this is jettisoned by our political parties. The precautionary principle articulated in Rio Declaration, as well as the clauses of the Convention of Biological Diversity is followed in breach.

The ongoing political debate on Western Ghat indicates that our political class has least respect for implementing the laws of the land to protect the fragile resource base, and even when there is an opportunity with scientific inputs to conserve the Western Ghats, the parochial interests of political elite gets predominance over the interest of environment protection. E F Shumacher said "Ecology in Permanent Economy", but for our political class "Ecological decimation is the permanent goal" to attain the higher GDP growth at the cost of people and environment.

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Terrorism of Tourism! "Statue of Unity Project"

An Alliance against the Environment, Life & Livelihood of Tribals

Rohit Prajapati*

The Economic Times on 26.4.2015 reported, "Tea sellers in India can have contrasting fortunes. While Narendra Modi who sold tea as a youngster has grown up to become the country's prime minister, Ambalal Tadvi, 40, a tea seller from

Gujarat's Narmada District is staring at an uncertain future. His stall and the little bit of farm land will soon be taken up by the Statue of Unity Project, a 182-metre tall statue of Sardar Vallabhbhai Patel along with tourism infrastructure coming up

nearby."

In March 2015, after the area for 'Shreshtha (Bhrashta) Bharat Bhavan', a three star hotel, which is coming up as part of Statue of Unity Project was cordoned off, the Government of Gujarat attempted to

evict six families comprising 70 people from their homes, land and livelihoods.

The terrorisation of the people reached a fever pitch on 28th March 2015 when six of the affected villagers and three children while registering their peaceful protest for not even receiving compensation for their "acquired" land were illegally arrested and held without proper food and facilities. Now a police force stands guard 24 X 7 outside the newly raised gate through which the people have to pass in order to access their homes and land, turning their homes into in a veritable "Open Air Prison". But this is only the most recent event in a long line of repression against the people's democratic opposition to the controversial project.

Harassment of activists and locals started right from the time of laying the foundation stone of the Statue of Unity (31th October 2013), when they questioned the Gujarat Government over not securing the requisite Environmental Clearance for the said project. Rather than responding to the concerns raised, the Government illegally arrested local tribals; some other activists were put under house arrest. The strategy of the Gujarat Government was to follow its routine practice of "preemptively" arresting local activists as and when any state or corporate function was organised. Indications are aplenty that this is just the beginning of the crackdown; in the coming years the Government will step up its offensive as conflicts mount over increasing number of tribals being forced to leave their tea shops, marginal landholdings, and ancestral homes to give way for this luxury tourism project and the "development" regime.

The eagerness with which the government wishes to somehow complete the project is evident in its willingness to sell off tribal land for a pittance; for example a December,

2014 Resolution of the Gujarat Government clearly states "Considering the security of Statue of Unity and Sardar Sarovar Dam if the need arise the remaining land for Garudeshwar weir can be bought at the rate of Rs. 7,50,000 per hectare". This price is a pittance compared to the market price for land in the region. What is equally alarming is the fact that the Government of Gujarat has casually circumvented the entire legal mechanism for environmental and social impact assessment. Environmental Clearance required under the Environment Impact Assessment (EIA) Notification of September, 2006, has not been sought for any component of this elaborate tourism dream project. What becomes abundantly clear from the official website (www.statueofunity.in), is that the statue project is not simply the construction of a "mute monument". It is an elaborate 'Tourism Project' which includes its principal component, a 182 meter-tall iron statue of Shri Sardar Vallabhbhai Patel built over a project area of more than 120,000 sq.mtrs. surrounded by a man-made lake (reservoir called Garudeshwar Weir); a bridge connecting the statute to the mainland; improved roadway between the Statue and Kevadia village; parking and transport site; and hotel and Convention Centre (Shreshtha Bharat Bhawan). These project components are proposed to be constructed as part of Phase I of the Statue of Unity Project. Phase II of the Project will include the development of banks of River Narmada up to Bharuch District; development of road, rail and tourist infrastructure and tourism corridor from Garudeshwar to Bhadbhut. These are also part of the composite Statue of Unity Project, although the actual project area of this stretch of about 90 Kms. has not yet been

revealed to the general public.

A serious concern which has been disregarded is that Project site is located on an active tectonic plate in a fault line area which is already burdened with the load of the Sardar Sarovar Dam and its massive reservoir.

The construction of the tourism project and other human activities after the completion of the Project is bound to have adverse effects on the downstream river, its biodiversity, and the surrounding wetlands all of which has been ignored by the Government of Gujarat. It is also pertinent that for the World's Tallest Statue, the Government of Gujarat have not even engaged in a Social and Environment Impact Assessment which would shed light on the impact of the project and the resultant influx of migrant labourers and tourists on the livelihoods of the indigenous people who have been residing downstream of the project for generations.

Surprisingly, the Government of Gujarat had allocated Rs. 500 crores in the 2014-2015 budget and Government of India also had allocated Rs. 200 crores in the 2014-2015 budget for the 'Statue of Unity Project' by presuming that the 'Statue of Unity Project' does not require environment clearance from the concerned authorities. This was also confirmed by information received in response to our RTI application filed in June 2014 about the environment clearance. The concerned authority clearly states, "Environment Clearance is not required to be obtained; hence Environmental and Social Impact Assessment of the Statue of Unity Project and its contribution to the cumulative impact of all the projects and activities in the area is not carried out."

The Statue of Unity Project will have a widespread impact on the existing infrastructure in the area, land use

within a 20 km radius of the project site, flora, fauna, birds and aquatic life due to mechanical structures and lights, aquatic life due to dredging and disposal of dredging materials, surrounding communities due to land acquisition, fishing activity, the existing traffic network due to the influx of tourists and transportation of construction materials, and broadly the air, surface water, groundwater, air, bio-diversity, noise and vibrations, socio-economic status and public health. Other impacts due to quarrying of stones and transportation and also emissions from DG Sets are also expected.

The construction is bound to result in damage to the river, riverbed, downstream river, its biodiversity, its active water body, the people living downstream and their livelihoods. The Project will also result in displacement of people from Kevadia Village and people of the other areas; the full extent of

displacement is not yet known as the planned location of the project's other components has not been made public.

While the Statue of Unity tourism project might be considered as a 'Dream Project', in reality, this project is nothing but a project which will rob the home, land, & livelihood from the tribals, adversely affect the Narmada river, Shoolpaneshwar Sanctuary, biodiversity of the area, downstream river, and the ecology of the area.

The Gujarat Government and Modi-led Central Government think they can hide behind the 182 meter, towering Statue the full extent of environmental destruction that will be caused by the Statue project. Local citizen's groups, social movements, democratic rights groups and concerned citizens have already begun tearing down the lies and exposing the casual nature by which the statutory authorities have abdicated their legal and procedural

responsibilities as regards obtaining Environmental Clearance, public consultation, and Social Impact Assessment.

The statue is symbolic of the model of destructive development which the government is promoting. While evaluating the need for such tourism projects what is required is a wholistic approach to development which focuses attention to issues relating to 'Human Development Index', the 'Multidimensional Poverty Index' and the 'Composite Development Index'. In the absence of such a holistic approach to development, the Modi Government will have turned its back on the adivasis of Kevadia Village or the Gujarati "chai wallah" for good.

People are determined to fight back 'terrorism of tourism' and assert their fundamental right to live with dignity in their homelands.

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PUCL Statement: 18th May 2015

Drop the Juvenile Justice (Care and Protection of Children) Bill 2014

People's Union for Civil Liberties (PUCL) strongly condemns the recent Juvenile Justice (Care and Protection of Children) Bill 2014, which permits juveniles between the ages of 16 - 18 years who are accused of committing "heinous" offences (i.e. crimes carrying imprisonment of seven years or more) to be tried as an adult, and also proposes that such children should be transferred to adult prisons.

PUCL would like to point out that this amendment creating a new class of juvenile offenders (by differentiating between children between 16-18 years and those below 16 years) violates the UN Child Rights Convention (UNCRC) which clearly provides that all signatory countries should treat every child under the age of 18 years "in the same

manner" and not try them as adults as this will be discriminatory towards children. It is important to point out that India is signatory to the UNCRC, and in fact the Juvenile Justice (Care and Protection of Children) Act, 2000 has been framed to comply with the UNCRC.

PUCL is particularly concerned about another new proposal which makes a distinction between two juvenile offenders committing the same offence based on the age of the offender on the date of apprehension or arrest, and not on the date of committing the offence, which is the law presently. The new law thus provides for trial as adult and higher or enhanced penalty of imprisonment of 7 years and above (for committing "heinous" offences) and 3 to 7 years (for committing "serious" offences) if the juvenile

offender is arrested after crossing 21 years; in contrast, the penalty if the same juvenile offender is arrested before crossing 21 years is maximum of 3 years (if child) or 7 years (if adult) for committing "heinous" offences and counselling or fine or maximum 3 years in special home for committing "serious" offences.

These legal changes run counter to the judgment of a Constitution Bench of the SC in 'Pratap Singh vs Jharkhand' which held in 2005 that in offences involving juveniles, what matters is the age of the offender on the date the offence was committed and not the date when he was arrested. This apart, the amendment to the law making the age of the juvenile offender on the date of arrest and not age on date of committing offence runs counter

to fundamental rights guaranteed under Article 14 (equality clause), Article 20(1) (not subjecting to penalty greater than applicable at time of commission of offence) and Article 21 (requirement of fair and reasonable procedure).

What is very unfortunate is that the Ministry of Women and Child Development has completely ignored the recommendations of the Parliamentary Standing Committee on Human Resources Development which submitted its report on the proposed Bill in February, 2015. The Report stresses, "The Committee is dismayed to note that in spite of such a huge feedback made available to the Ministry, it failed to analyse and incorporate many of the valid suggestions of the stake holders on some crucial provisions of the proposed legislation" and concluded that the "existing juvenile system is not only reformatory and rehabilitative in nature but also recognises the fact that 16-18 years is an extremely sensitive and critical age requiring greater protection. Hence there is no need to subject them to different or adult judicial system as it will go against articles 14 and 15(3) of the Constitution."

The Committee also clearly pointed out that data of increased crimes committed by juveniles in the age group of 16-18 used as an argument by the ministry for the proposed changes are "misleading" and based on figures of FIRs registered and not convictions. They therefore recommended that the 2000 law not be amended.

The 2014 Bill also has other legal infirmities. To illustrate, there is improper gradation of offences and disproportionate penalties as for example, penalty for engaging in child trafficking is lower (5 years' imprisonment) than giving a child intoxicating substances (7 years' imprisonment). This glaring discrepancy is shocking considering

the extent of child trafficking in India. The 2014 Bill was proposed in the wake of the Nirbhaya incident ostensibly as an attempt to improve women's safety. However, there is little or no evidence to suggest that greater incarceration of juveniles contributes to lower levels of crime. In fact, NCRB statistics, which are the only cited basis for the introduction of this Bill, indicate only a negligible increase in crimes by juveniles, most of which can be attributed to criminalisation of consensual sexual activity between children. Very importantly, the structure proposed by the Bill, to examine the capacity of a child to commit a crime is unfeasible, as there is no scientific basis proposed for assessment. This experiment in transferring juveniles to adult prisons has conclusively failed in every other country which has adopted it, and increasing levels of recidivism is a guaranteed outcome of such a system.

The manner in which this Bill has been pushed through suggests a complete disregard for the civil liberties and human rights of children. The Bill was introduced with only fifteen days time given for public comments, and no attempt was made to disseminate its provisions among the general public. There seems to be a concerted agenda to push this regressive Bill forward, undoing the increasingly progressive understanding of juvenile justice that we have achieved in the last 15-20 years.

We wish to point out that increasing number of children in conflict with the law is actually an indicator of the failure of society to take care of our children. It is also fallacious to suggest that greater levels of incarceration can address violence against women; this denies structural inequalities which perpetuate violence against all

vulnerable groups in society, including children and women. We have observed that in any case the police arrest juveniles with impunity, even in the absence of judicial provisions. Therefore this Bill, if passed, will only enable the State to do so with legal sanction.

PUCL has always believed that deterrence through harsher punitive measures cannot adequately address crime in society. PUCL also believes that civil liberties and due process cannot be sacrificed on the specious and fallacious reasoning of ensuring public safety. It is common knowledge that the Indian prison system does not rehabilitate, and subjecting children to the adult prison system will only push them further into a life of crime. Children imprisoned under the new law and coming out of adult jails will not only have no jobs, skills, education and thus no employability, but will also be forced to a life of crime for sheer survival.

PUCL therefore demands that the provisions of Juvenile Justice (Care and Protection of Children) Bill 2014 enabling transfer of children to an adult prison system be rejected in their entirety, and that the Parliament of India upholds the human rights of children to be treated with fairness and compassion.

Prof. Prabhakar Sinha, President;
Dr. V. Suresh, General Secretary,
PUCL National

Note: After our statement was released, we learnt that during the discussion on the Bill in the Lok Sabha, the Minister had informed the House that the problematic provision (Clause 7 of the 2014 Bill) which made the distinction between juvenile offenders committing the same offences being treated differently based on the date of their arrest or apprehension, and not on the date of committing the crime, had been dropped. PUCL welcomes the dropping of this clause. □

Around 25 foreigners detained in Sewa Sadan, Narela, are on hunger strike since 19th May Morning in Protest

Around 25 foreigners belonging to different nations including Pakistan, Bangla Desh, Mynamar, Senegal, Srilanka are on hunger strike since yesterday morning(19th May 2015) in protest against inhuman treatment given to them by the Social Welfare Department of the Delhi Govt. These foreigners have completed their respective jail terms and are lodged in the said Sewa Sadan, called Lampur camp in

Narela, Delhi, and are waiting to be deported to their respective countries. Some of them are waiting even for one to two years and some are there for two to four months. They are not being given proper treatment as there is no arrangement for fans or cooler and there is also lack of sufficient drinking water. Quality of food supplied to them is also below standard which they find it difficult

to eat. There is no arrangement for phone facility so that they may be able to talk to their relatives in their country. In spite of their repeated demands the authorities have not paid any heed to their demands.

PUCL (Delhi) call upon the Delhi Government to immediately attend to their problem and take suitable steps to redress their grievances.

N.D. Pancholi, President, PUCL (Delhi) Mob. 9811099532 ☐

Delhi PUCL:

HC Upholds Acquittal of Three 'Terrorists'

Says prosecution's plea 'suffers from gaps, lacunae which remain unexplained and cause doubt about recoveries'

The Delhi High Court on Thursday upheld a trial court verdict acquitting two Kashmiri men and a Pakistan national accused of being "terrorists". It also pointed out serious lacunae in the prosecution story. Three years ago, the trial court while acquitting these men had pulled up the Special Cell of the Delhi Police for the probe into the case.

The Special Cell had arrested the three from Dilli Haat in April 2007 claiming that it had received secret information that arms and explosives were to be delivered by the Lashkar-e-Tayyeba to a Pakistani fidayeen in Delhi in order to carry out an attack to disrupt the celebrations of the 150th anniversary of the 1857 Revolt.

The prosecution had charged them with waging war against India, being part of a terror organisation and various other offences under the IPC, Arms Act, and Unlawful Activities Prevention Act (UAPA).

The trial court acquitted the three of all these charges, but convicted the Pakistan national Mohd Hassan of violating provisions of the Passports Act.

Police had then filed an appeal before the High Court, which was dismissed on Wednesday.

The court of Justice Sanjiv Khanna and Justice Ashutosh Kumar in its

29-page judgment set aside the objections raised by police in their appeal and noted that the prosecution "suffers from various gaps and lacunae which remain unexplained and consequently cause doubt and debate about recoveries made and to what extent the respondent (No.1 and 2) were actually involved".

Jammu residents Shafaqat Iqbal and Shabbir Ahmed and Pakistan citizen Hassan had claimed that they had been "illegally picked up" from Jammu by police and brought to Delhi, where they were arrested after having been detained illegally for several days.

The Delhi High Court in its order did not make any comment on the allegations raised by the accused men but took note of the various lapses on the part of police and the prosecution.

The court noted that the arms, ammunition, RDX and money -, which police had claimed had been brought to Delhi by Shafqat and handed over to Hassan -- was not recovered from the accused in front of public witnesses.

"This finding is also relevant as we have held that incriminating material had been recovered/found, before Mani Ram (PW3) and Hari Singh (PW7) had the occasion to join investigation. They had not seen

what had actually happened/ transpired, before the three persons were apprehended," the court said. Further, the court held that the hand grenades that were allegedly recovered from the accused had never been produced before the court as evidence and no explanation had been given to explain their absence.

"It was the responsibility of the prosecution, even if there was destruction or diffusion of the hand grenades, to produce necessary evidence. There is complete failure of the prosecution to lead evidence on the said aspect," the court said. Shafqat and Shabbir were released from jail after the trial court acquittal in 2012.

Hassan has remained in detention at the Foreigners Detention Centre, Lampur, for the past three years.

According to advocate N D Pancholi, who represented the two Kashmiri men, their families had been "afraid" that they would be sent back to jail - the two had already spent over five years in jail during the trial court hearing.

(Accused were represented by me along with Mr. M.S. Khan, Advocate).

Published in The Indian Express, (15th May 2015) Link: <http://indianexpress.com/article/cities/delhi/hc-upholds-acquittal-of-three-terrorists/> ☐ ☐ ☐

PUCL Letter to President of India requesting him not to consider Mr. Justice Sathasivam for Appointment as NHRC Chairperson

29th April, 2015

To,
Shri Pranab Mukherjee,
Hon'ble President of India.
Rashtrapati Bhavan
New Delhi
Respected Rashtrapatiji,
Greetings!

Our National President, Prof. Prabhakar Sinha, has already sent a representation to you requesting you not to give your consent to the appointment of Justice Mr. P. Sathasivam (presently Governor of Kerala) as Chairperson of the National Human Rights Commission, if such a recommendation is made to you for your approval. In this connection, I will like to emphasize on behalf of our organisation, that the views expressed by Prof. Prabhakar Sinha are the views of Peoples Union for Civil Liberties. I am therefore taking the liberty of sending the same representation which may kindly be treated as the representation on behalf of People's Union for Civil Liberties, for your kind consideration.

Prof. Sinha has given ample and justifiable reasons in support of his view as to why such an appointment, if it is made, will be contrary to the law, democratic ethic and the spirit of the Indian Constitution and the Protection of Human Rights. We do not want to question either Justice Sathasivam's honesty or his judicial ability, but wish to emphasize that the most essential and indispensable qualification of the Chairperson of the NHRC is the enjoyment of complete and unshakeable trust of the people in his ability to stand for their rights against the almost almighty Executive. By accepting his appointment as a Governor, after holding the post of the Chief Justice of India, he has accepted a position in which he would be taking orders, including for his own resignation,

from the Home Secretary of the Union Government. Many Governors have received such orders from the present government and have been dismissed for non-compliance. Justice P. Sathasivam has thus accepted a position in which the incumbent is liable to be hired and fired by the Executive. At least, six or seven Governors have been fired by the present government in a little less than one year.

India is a signatory to the 'Paris Principles' or the 'Principles guiding National Institutions for the Promotion and Protection of Human Rights' (1991) which was adopted by the UN Human Rights Commission in 1992 and the UN General Assembly in 1993.

According to the Paris Principles, National Human Rights Institutions (NHRIs) are expected to be "autonomous" and function "independently" of the government and to exercise their power freely to consider any question falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner". Importantly, a key function of the NHRIs includes to "drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government "(emphasis ours).

Thus two of the 6 key elements of the 'Paris Principles' require National Human Rights Institutions to be "autonomous" and "independent" of the government in all their functioning.

As the PUCL National President, Prof. Sinha, points out, how will

ordinary citizens have confidence in the impartiality, fairness, objectivity and independence of a person who owes his current position as Governor of a state to the pleasure of the ruling Central Government? When such a person, who is seen as being close to the ruling dispensation and Government, is appointed to head the NHRC, not only will the appointment be seen as tainted but it will also affect the very integrity, credibility and authority of the institution meant to protect violation of the human rights of citizens. It needs no emphasis that some of the biggest violators of human rights are state agencies. Following his retirement, Justice Sathasivam's act of accepting the office of the Governor, with its terms and conditions being dishonourable for a former Chief Justice of India, has destroyed the confidence of the people that such a person may ever stand up to his erstwhile master to protect their human rights.

It is precisely such a compromising situation that is anticipated by the United Nations High Commissioner for Human Rights who points out in a Report in 2010:

"True independence is fundamental to success of the institution ... If it is not independent, or not seen to be independent, it is unlikely it will be able to achieve much of lasting worth".

It will be relevant to point out at this juncture, that apart from 'autonomy and independence' the Paris Principles also stress the importance of (i) 'transparency' in the appointment process, (ii) wide spread 'consultation' with civil society and human rights organisations and (iii) ensuring 'pluralism' and diversity in the selection and composition of members of Human Rights Institutions. Any dilution in the operation of these standards will

lead to a downgrading of the NHRC by the ICC, the accreditation body of the UN Human Rights Council. It will seriously affect the trust and confidence of ordinary citizens of India in the NHRC as an impartial body which will protect their human rights.

We would like to reiterate what our National President, Prof. Sinha has requested of you: not to accept the recommendation of Mr. Justice Sathasivam, retired Chief Justice, Supreme Court of India and presently Governor of Kerala, for the post of the Chairperson of the NHRC.

Sir, fortunately in this case, you can protect our human rights by refusing to appoint Justice Sathasivam as

chairperson of the NHRC even if his name is recommended. You have to make the appointment of the Chairperson of the National Human Rights Commission not on the advice of the Council of Ministers, which is binding under Art.74 of the Constitution, but on the recommendation of a Committee (consisting of the Prime Minister, the Union Home Minister, the Speaker of the Lok Sabha, the Deputy Chairperson of the Rajya Sabha and the Leaders of the opposition in both the Houses of Parliament) constituted under sec. 4 of the Protection of Human Rights Act, 1993, which is not binding under the Constitution. The only limitation on your power to appoint the

Chairperson and the members of the NHRC is that you are not empowered to make the appointment without obtaining the recommendation of the said Committee. Therefore in this case, Sir, the final decision vests with you as the President of India, and not with the Cabinet whose advice is mandatory for the President usually, but not in this case.

We are confident you will take an informed decision and decide what is best for the nation and safeguarding human rights.

With best regards,

Yours faithfully

Prof. Prabhakar Sinha, President, PUCL National; **Dr. V. Suresh**, General Secretary, PUCL National
□

Letter to the President of India sent by Prof. Prabhakar Sinha:

Please Do Not Appoint a Governor as Chairperson of NHRC

To,
The President of India,
Rashtrapati Bhavan, New Delhi.
Sub.: **Please Do Not Appoint a Governor as Chairperson of NHRC**

Sir,

It is widely reported in the media that Justice Mr. P. Sathasivam is seriously being considered for appointment as the Chairperson of the National human Rights Commission following the impending retirement of the present incumbent. We do not want to question either his honesty or his judicial ability, but wish to emphasize that the most essential and indispensable qualification of the Chairperson of the NHRC is the enjoyment of complete and unshakeable trust of the people in his ability to stand for their rights against the almost almighty Executive. By accepting his appointment as a Governor, he has accepted a position in which he would be taking orders, including for his own resignation, from the Home Secretary of the Union Government. Many Governors have received

such orders from the present government and have been dismissed for non-compliance. Justice Mr. P. Sathasivam has thus accepted a position in which the incumbent is liable to be hired and fired by the Executive as a domestic servant for not dancing to its tune. At least, six or seven Governors have been fired by the present government in a little more than one year.

His act of accepting the office of the Governor under its dishonourable terms and condition for a Chief Justice of India following his retirement, has destroyed the confidence of the people that such a person may ever stand up to his erstwhile master to protect their human rights. Should a person who does not enjoy the trust of the people (but who inexplicably earned the trust of the present Government of India) who are going to be in his care be appointed as the protector of their rights and interest?

Sir, fortunately in this case, you can protect our human rights if you choose to do so by refusing to

appoint him even if his name is recommended. You have to make the appointment of the Chairperson of the National Human Rights Commission not on the advice of the Council of Ministers, which is binding under Art.74 of the Constitution but on the recommendation of a Committee (consisting of the Prime Minister, the Union Home Minister, the Speaker of the Lok Sabha, the Deputy Chairperson of the Rajya Sabha and the Leaders of the opposition in both the Houses of Parliament) constituted under sec. 4 of the Protection of Human Rights Act, 1993, which is not binding. The only limitation on your power to appoint the Chairperson and the members of the NHRC is that you are not empowered to make the appointment without obtaining the recommendation of the said Committee. In this case, you are bound to be held personally responsible for appointing the Chairperson even on the recommendation of the Committee since you are not bound to accept

its recommendation. Thus, the people of India would hold you responsible for appointing a person as the Protector of their rights, who has been serving as an obedient servant of the present government in case Justice Mr. P. Sathasivam is so appointed.

Our simple request is that you consider the merit of the points raised and exercise your power to not accept the recommendation of the Committee to appoint a person, who by accepting to act as the agent of the Executive, has lost the trust of the people that he would be able

to stand up to his erstwhile masters (for their rights) whose obedient agent he continues to remain till he becomes the Chairperson of the National Human Rights Commission.

Yours faithfully,

Prabhakar Sinha, A concerned citizen ☐

Press Statement: 10th May 2015

PUCL (Delhi) Strongly Condemns Delhi Govt. Order to Sue its Citizens for Defamation

PUCL (Delhi) is shocked to learn that Govt. of Delhi has approved a policy to initiate prosecution of the citizens under section 499/500 of the Indian Penal Code for making defamatory imputations against the Chief Minister, Ministers and various govt. officials. The Delhi Govt. has issued a circular dt.06.05.2015 in this connection. It is a very reprehensible step by the AAP party which has been voted to power with an overwhelming majority by the citizens of Delhi as it had claimed and promised that it would be

accountable to the people and its functioning would be transparent. Such an order can be passed only in an authoritarian or a fascist state. Purpose of such an order seems to be to threaten and deter citizens from expressing any dissent or criticism of the functioning of the Chief Minister, Minister and other officials.

Delhi citizens are not going to tolerate such an order which is a flagrant attack on their fundamental right i.e. 'freedom of expression'.

As far back as in 1956 the Supreme Court in this connection had said,"

Those who fill a public position must not be too thin skinned in reference to comments made upon them. Whoever fills a public position renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to his office." (1956 SCR 476, Kartar Singh).

We therefore call upon the Chief Minister of Delhi Govt. to respect the democratic spirit of the Indian Constitution and immediately withdraw such derogatory order.

N. D. Pancholi, President, PUCL Delhi ☐

PUCL Delhi: PUCL President's letter to Noor Saba to take back her decision: 29th April 2015

Earnest Appeal of Behalf of PUCL (Delhi)

For self immolation as her issue widely discussed in social and other media as well as raised in Rajya Sabha with assurance of justice

"Dear Madam,

PUCL (Delhi) is very much perturbed to know that though 35 years have passed when your husband died yet you have not been given your dues of family pension and other post retrieval benefits inspite of your valiant effort in fighting legal battles in lower courts to the Supreme Court. This compelled you to make such an extreme decision. PUCL share your pain.

But we are of the opinion that no useful purpose will be served if you

attempt to take resort to this desperate step. Your case has been and is being widely discussed in social media and large number of persons have come to support your demand for justice. It has been widely publicized in several newspapers and TV channels. I learn that your case has been raised by Shri Sharad Yadav and Shri Ali Anwar in question hour in Rajya Sabha today and all the MPs present supported your demand. Shri Arun Jaitly assured the House on behalf of the Central Government that the latter would take up the issue with the State government and would ensure

justice to you.

In view of this I do not think it advisable for you to continue your 'dharna'.

I therefore assure you that PUCL (Delhi) will pursue your case and would see to it that your grievances are suitably redressed at the earliest.

I, therefore on behalf of PUCL (Delhi) appeal to you to immediately withdraw your agitation and patiently wait for some time to see the desired results.

With best wishes,

N. D. Pancholi, President, PUCL Delhi (Mob: 9811099532) ☐

Urbanization as "Development" Versus Constitutional Safeguards for the Tribal People

Report of a PUCL Fact Finding Team into unrest and repression in the Sundergarh Scheduled District of Odisha

The Team:

Isha Khandelwal, Lawyer, Chhattisgarh PUCL; **Ashish Beck**, Lawyer, Chhattisgarh PUCL; **Sharanya Nayak**, Human Rights Activist, Odisha PUCL; **Dr. P.M. Antony**, independent researcher, Ranchi, Jharkhand PUCL; **Pranab Doley**, Activist, Odisha PUCL; **Atindriyo Chakrabarty**, Lawyer, West Bengal, Chhattisgarh PUCL

Dates: 16th to 20th February 2015

Foreword:

The present Fact Finding was conducted over a period of 5 days. The fact finding process was initiated after the affected in the region and some local activists in the area sought an independent civil society investigation into the brutal suppression of the adivasis of Sundergarh District who have been protesting against the inclusion of their scheduled villages especially, Jagda and Jhartarang Panchayat into the Rourkela Municipal Corporation. This included information that huge numbers of villagers were getting arrested in the region and that on 20th January 2015, when the villagers organized an economic blockade as a sign of protest, several villagers including women and children were severely beaten up. On the initiative of the Chhattisgarh PUCL, this was deliberated in the National and various other state units of the PUCL and thus a fact finding team was formed including members from Odisha, Jharkhand and Chhattisgarh, particularly since these other states also have similar experiences of Scheduled rural areas being forcibly included in the

urban areas.

The fact finding team reached Rourkela, Sundergarh on the 16th and over the next 5 days, met villagers from different villages who were arrested, beaten up or who are still running under fear of arrest owing to pending FIRs against them. On the first and second day of our visit, we met various local leaders and had detailed conversations where they gave a deeper historical context to the entire issue. Women of the villages, who were arrested on the day of the economic blockade, were released on bail during our visit and we were able to meet and interact with them. There were old and young men and women who were severely beaten up, they also spoke to the team and described the events of that day. Mr. Jablun Ekka, George Tirkey, Lily Kujur, Sunita Singh, Tej Kumari, Ramnath Toppo, gave detailed accounts of the circumstances in which they learnt of the notification regard to the inclusion and how the villagers have been protesting against it right from the very beginning. Other than the villagers we met the Additional District Magistrate, Station House Officer Brahmanitarang, had telephonic conversation with the Superintendent of Police Sundergarh, and went to the Municipal Corporation to speak to the officers and obtain documents relating to the transformation of Rourkela Nagar Panchayat into a Municipal Corporation.

This report is based on our conversations with the villagers, Administration and also on the basis

of various documents which we were able to obtain procured during our visit.

Background:

Sundergarh is a Schedule Five district in the north-western part of the state of Odisha. It has been a site of multiple movements for the right to self-determination historically, and also one of the regions that has made great sacrifices for the development of this country. As much as 67 per cent of the population lives in the rural areas. Sundergarh is the 2nd largest tribal district of Odisha having 51% of tribal population. The entire district is a Scheduled Area thus making the Fifth Schedule as well as Acts like PESA, OSATIP and special schemes meant for tribal communities under ITDAs applicable in the area.

The marginalization process of the tribal communities in Sundergarh started with the industrialization, mining and urbanisation of the district leading to large scale dispossession, as also deprivation resulting from the alienation from forest resources on which tribal communities were dependent for survival. Setting up of one of the first steel plants of the country, Rourkela Steel Plant, resulted in large scale displacement of adivasis who inhabited the Rourkela area, without any consideration for their resettlement and rehabilitation. Rules under Fifth schedule were violated while adivasis in the area were getting impoverished and their numbers reduced with every successive census after independence.

	Tribal population & its Percentage to total population – Odisha & Sundergarh					
	1961	1971	1981	1991	2001	2011
Odisha	24.07	21.11	22.43	22.21	22.13	22.84
Sundergarh	58.12	53.4	51.26	50.74	50.19	50.74
Source: Rann Singh Mann (ed.) (1996) Tribes of India: Ongoing Challenges, New Delhi: MD Publications Private Limited and Census of India 2001						

The story of adivasis and the history of their dispossession by every agency in Sundergarh is not very different from other adivasi areas. In several Schedule V areas of the country similar instances of acquisition of tribal land by the state and by corporate entities in the name of 'development' has become a worryingly common phenomenon. Often, areas around towns and cities in Schedule V areas are demarcated as Nazul land i.e. land that is earmarked for urban development. Eyewash schemes, like the notorious Singhdeo Yojana of Sarguja, Chhattisgarh, are made to accommodate the original settlers of such lands for a while and then they are displaced and all the land that they have been residing in for generations are taken by the state. In this context and standing at this juncture of history, the situation involving the expansion of the Rourkela Municipal Corporation and the resistance by Sundergarh Zila Adivasi Mulvasi Bachao Manch (SZAMBM) stands as a hope to all the adivasis in the Fifth Schedule areas.

Present Issue:

The issue in dispute concerns the expansion of Rourkela Municipality into Rourkela Municipal Corporation which is being undertaken by the Rourkela Development Authority (RDA) reportedly as part of the implementation of Odisha Development Authority Act, 1982 for the planned growth of cities. News of its inclusion started flashing in the newspapers much before the notification with government claiming that the same is being to fulfil the aspiration of the citizens of Rourkela, and that it would cater to the need of people of the city by not only providing effective basic service delivery but also a citizen friendly urban local body for developmental perspective and growth.¹

But the present issue of forcible inclusion of adivasi panchayats into the proposed RMC without consulting the ST/SC (affected) populations is being perceived by the villagers as another strategy to

deprive them of constitutional protections and convert them into a minority community of unskilled contract labourers. The said inclusion of these two panchayats under Rourkela Municipal Corporation is unconstitutional. It violates the Panchayat Extension to Scheduled Areas (PESA) Act under which the state government has to take the consent of the people of the village and the Gram Sabha, which has not been followed in the present case. Besides they will lose all the rights enshrined under FRA. The villagers of these areas fear losing their economic, legal, social and cultural rights in the process.

The primary reason for notifying Rourkela Municipality limits into a Corporation is to make the city eligible for up-gradation to a Smart City claims the villagers. It is to be noted that Rourkela is one of the proposed smart city. Additionally, Sundergarh administration is moving ahead with the Comprehensive Development Plan (CDP) for creation of Greater Rourkela. The CDP envisages inclusion of notified areas of RDA including Rourkela Municipal Corporation (RMC) limits, captive township of Rourkela Steel Plant (RSP) and adjacent rural pockets of Kuanmunda and Lathikata blocks. The CDP draft proposal, prepared by the Town and Country Planning Organisation (TCPO) of the Union Ministry of Urban Development and Rourkela Development Authority (RDA), is ready for approval of the State Government. Reportedly, the geographical area of CDP would be 258 sq. kms spread over 52 urban and sub-urban pockets and 52 villages. The current notification might be the first step towards execution of this CDP.

But in all this, the current habitation patterns and people's consent has not been factored in, said Mr George Turkey, Present MLA, Birmitrapur and leader of Sundergarh Zila Adivasi Mulvasi Bachao Manch (SZAMBM). That is why adivasis from this area are protesting and resisting the inclusion which will

result in the area losing the schedule area status and will affect their cultural identity, practices and traditions.

According to Census 2011, Rourkela Municipality limits excluding the captive township of Rourkela Steel Plant (RSP) has a population of 273,217, which is 26,783 short of the criteria required for Corporation status. It was this reason that the government decided to include various neighbouring villages in the municipality fold, especially villages like Jagda and Jhartarang with huge population and land.

"We are fighting for our rights; we will develop on our own, provided the sarkar allows our Constitutional rights on our (lands) resources.", one of the villagers to the FF team. Notification and objections by the villagers:²

On 21st October 2013, State Election Commission of Odisha issued an Order not to conduct the election of Rourkela Municipality as the Government proposed a Corporation for Rourkela. On 15th November, 2013, a notification was published by the Govt. of Odisha³ (No: S.R.O.No.- 680/2013) inviting objections and suggestions from the people of the affected areas for the formation of a larger urban area in the district of Sundergarh within 30 days from the publication of the above notification.

Gazette notification 2222. S.R.O. No.-680/2013—specified the following areas to be under the Larger Urban Area and also asked for any objection or suggestion in respect of the said proposal to be submitted to the State Government through Collector and District Magistrate, Sundergarh within thirty days from the date of publication of this notification in the Odisha Gazette and the objection or suggestion as may be received in respect of the said proposal before expiry of the said period shall be duly considered by the State Government.

Sl. No.	Name of municipal Council and Gram Panchayats	No. of the Ward/ Name of Villages
1	Rourkela Municipality	Ward No. 1 to 33
2	Jagda Gram Panchayat	i. Jagda-RTU-29
3	Jhirpani Gram Panchayat	i. Jhirpani- RTU-28
4	Jhartarang Gram Panchayat	i. Gopapali, ii. Brahmani Tarang, iii. San Brahmani Tarang, iv. Jhartarang
5	Kalunga Gram Panchayat	i. Lungei, ii. Kalokudar, iii. Beldihi, iv. Goibhanga, v. Jiabahal, vi. Kalunga-ka, vii. Kalunga-kha
6	Chikatmati Gram Panchayat	i. Mahaliapali, ii. Malikpali, iii. Sarla, iv. Chikatmati v. Bhalupatra, vi. Sannuagaon, vii. Killinga
7	Jalda Gram Panchayat	Jalda

The said notification was out rightly rejected by adivasis of the area. The Respective Gram Panchayats responded back to the order through written memorandums and Gram Sabha Resolutions. Within a month they filed their objection against the proposed inclusion. Their claim was that as a result of inclusion they would lose their natural rights over land and would not be able to avail benefits under the Panchayats Extension to Scheduled Areas (PESA) Act, 1996.

Objections raised by them in their memorandums:

Sundergarh Princely State known as Gangpur & Bonai State was merged on the 1st of January 1948 with the State of Odisha. Sundergarh District was declared a Scheduled District in the year 1950, since then its administrative setup should have been as per the Fifth Schedule with Administrative control through the Union as per Article 339 of the Constitution of India. After the coming of the Orissa Estates Abolition Act 1951, all general laws were applied, including administrative governance, land governance, etc. Successive batches of outsiders were settled in this scheduled area, thus violating Art.19 (5) of the Constitution of India, and also the rights of the scheduled tribes.

After the 73rd constitutional amendment, the Panchayats (Extension to the Scheduled Areas) Act 1996, known as PESA ACT 1996 has been enacted by the Parliament to govern the rural areas

of the scheduled areas. Till date the Government of Odisha has not implemented the PESA Act fully as Traditional Villages in the scheduled areas have not been recognized as per the provisions of Sec-4(b) of the PESA Act. The present inclusion violates PESA act as no consent of the people have not been taken for the same.

After the 74th constitutional amendment, the Municipalities (Extension to Scheduled Areas) Act was passed in the Rajya Sabha in the year 2001 but lapsed since it was not introduced in the Lok Sabha. The result has been the vacuum of governance in the Urban Areas of Scheduled Districts.

The Orissa municipalities act 1950 and the amended Act, 1994 does not apply to the scheduled areas. And yet, in contravention to article 243 ZC (3) and 243 ZF the governor issued a notification vide: SRO No.743/95 dated 14th August 1995 with effect from 31st May 1994. This was the base on which the Rourkela Municipality was notified. The same earlier being challenged in the supreme court vide Writ Petition (Civil) No. 215 of 2012-Decided on 7-5-2013 in its orders upheld the Rourkela municipality with contradictory reasoning's.

State claims that the governor passed the notification in exercise of his powers conferred by clause (2) of Article 243Q of the Constitution of India read with sub-section (1) of Section 3 of the Odisha Municipal Corporation Act, 2003 (Odisha Act 11 of 2003).

Notwithstanding, that the governor's action is in contravention to the Vth schedule and part IX-A of the Constitution of India, the governor acts in contravention .

The notification and subsequent hostility towards the demands of the people gave birth to "Sundergarh Zila Adivasi Mulvasi Bachao Manch". Akhil Bharatiya Adivasi Vikash Manch, Sundergarh Zila Adivasi Advocates Sangh, Nari Suraksha Manch and Adivasi Suraksha Manch, Jhirpani came together and formed Sundergarh Zila Adivasi Bachao Manch. The manch initially started by local adivasi leaders was later joined by an independent adivasi MLA George Tirkey from Birmitrapur constituency. Adivasis from various villages are part of the manch namely, villages from Jagda and Jhartarang panchayats, Jalda, Dharamdih, Tala Bali Jodi, Jhirpani, Chikatmati, Kalunga etc.

In October 2014, again a memorandum was filed by the villagers. Paying no heed to the demands of the people, administration passed a final notification on 14th November 2014.⁴ In this final notification, the administration did lay off a few gram panchayats but at the same time for some unknown reasons kept a few other gram panchayats though they had as well objected to their inclusion in the corporation. The notification read as:⁵

S.R.O. No. 514/2014: Second Notification of the final inclusion of the area under the ULB (urban local

body) to be included in the municipal corporation area. It said that all the

objections and the suggestions for the said proposed larger urban area

were duly considered by the state government before deciding the areas to be included.

Sl. No.	Name of Municipal Council and the Gram Panchayat	Name of Ward/Name of Villages
1	Rourkela Municipality	Ward No. 1 to 33
2	Jagda Gram Panchayat	Jagda
3	Jhartarang Gram Panchayat	1 Jhartarang; 2 Brahmani Tarang; 3 Sana Brahmani Tarang; 4 Gopa Palli
4	Rourkela Town Unit	Nabakrushna Nagar, Tala Balijodi; IDL Colony, Gopabandhu Nagar; Bhanja Colony, Bada Sona Parbat and Dharamdhihi

According to the villagers, the said notification was neither announced in the newspaper, nor was the respective Panchayats informed. Villager's claims that even the 2013 notification was not informed to any of the villages. In both the instances, the leaders of the movement got to know of this through the internet. After the above notification, the aggrieved people of Sundergarh demonstrated in various different democratic ways for the cancellation of the said Notification. The representatives of the aggrieved people also knocked on every door of the state machinery from the President to the Prime Minister to the Governor to all the Ministries concerned but with no response to their plight and prayers. On 25th November, 2014, under the banner of Sundergarh Zila Adivasi Moolvasi Bachao Manch, a Rasta Roko agitation was conducted in the ved vyas highway area where thousands of villagers undertook the programme successfully from 11:00 am to 6:00 pm.⁶ The Tehsildar came to the spot at 6:00 pm and gave in writing that he would forward the demands of the people to the government to reconsider the issue of formation of (and inclusion into) the Rourkela Municipal Corporation. After a wait of more than 15 days, on 20th December 2014 villagers again went to the ADM, Rourkela to voice their objections but no assurance was given to them. This led to a decision by the manch to conduct an economic blockade, if the notification is not withdrawn. It was thus, manch called for a press meet on 7/01/2015 and declared that they would go for an indefinite economic blockade from 20/01/2015 onwards till the realization of their demands. On the 5th of January, Jual Oram, Minister for tribal Affair minister also wrote to the Ministry of Housing and Urban Development urging them to look into

the grievances of the people and to follow the PESA act.⁷ On 15th January 2015, another press conference was called by SZAMBM where Prafull Majhi MLA Talsara, George Minz (ex MLA Rajgangpur), Halu Mundari, ex MLA, Raghunathpur, George Tirkey, MLA, Birmitrapur came out in support of the economic blockade. Subsequent actions by the state to stop the protest: On the same day i.e. 15th January 2015, seven people were arrested and taken to Thana Raghunathpalli. Four of them were from Brahmanitarang and three were from Barsona village, Suidihi Gram Panchayat. Seven arrested were: Jablun Ekka, Ramnath Toppo, Santosh Kr. Barik, Charan Bhumij, Pancha Oraon, Jagdish Singh, Etwara Oraon. They were all arrested under an FIR which was filed on 25th November 2014 the day when the villagers held a Rasta Roko agitation. The case against them was for rioting, threatening to kill etc. Ramnath Toppo and Jablun Ekka, leaders of the manch, from Brahmanitarang, told the FF team that police came around 12 in the night and asked him and other people from his village to come to thana with them. They were all arrested and sent to jail the next day, after which on the 22nd January they were released on bail. The same FIR also names George Tirkey and "34 others". After this, a spate of arrests and detentions began on and from the 15th of January, so as to break the resistance of the people and foil the proposed economic blockade. A total of 72 people were arrested between the 15th and the 19th. None of them were granted bail before the 22nd. **The day of the economic blockade⁸:** Nevertheless, the economic blockade was organized on the 20th January 2015. Initially, the plan was to protest at 7 points in the area – Kukra gate,

Vedvyas Chowk, Rangeela Chowk, Kalaiposh (on National Highway), Karamdih (also on National Highway), Ujjwalpur (near the mines) and Hemgir. However, because many of the leaders and SZAMBM people were behind bars, the blockade could happen only at around two points – Kukra gate and Vedvyas Chowk. On 20th morning at 8am villagers gathered in their respective villages for the march. The procession began at 8.30 from basti Bijaptola of the village. Police arrived in large numbers, blocked people and chased them - men, women and children – into the fields. An old man called Johann fell unconscious. Boleros full of armed police surrounded the village from three sides. There were hardly 2-3 female personnel in the forces comprising of 12 battalions. The side of the Thana was left open. So the gathering started running along the fields towards the thaana. Then the police started pouring in hordes from the thana side. The police tried to break the crowd into 4 parts and make them run to the four sides but the villagers stuck together. Forces started abusing and assaulting the crowd. One young woman recalled a male police officer first pushed her on the ground, started beating her with sticks and threatened her with rape. She further told that police officers were uttering terribly obscene words to the women of the gathering, They further told that the police also used racist abuses against the tribal people. There were more than 500 people in the gathering and the police beat them mercilessly. Many of the women and men sustained injuries while they were manhandled. 11 women were later arrested for rioting and attacking the police officers on the 20th morning. FFT checked the medical documents of the injured women, and few of them clearly showed injuries to head etc.

Few of the women we met were still in pain and unable to move. On the one hand was brutal oppression by the police, and on the other hand was a persistent protest by adivasis from other villages. Even after all this, more than 10000 people participated in the blockade that day. The blockade at Kukra gate was led by George Tirkey and it lasted for 30 hours. After which, ADM went to the spot and met all the leaders and gave them an assurance that there will be a ministry level meeting where representatives of the villagers will be called. The blockade was called off thereafter.⁹

Post Economic Blockade:

Following up with the assurance given to them, a meeting was held on 29th January, in Bhubaneswar with the Urban and Housing Development Minister, Mr. Pratap Singh Deo, State Secretary, Deputy Secretary, Executive officer of Rourkela Municipal Corporation. Some 15 representatives of the villagers went for the meeting including 3 present MLA's, 2 Ex MLA's from congress, JMM, Lok Krantikari Dal and BJP and other members of the manch. In the meeting representatives voiced their objections again. They reminded that the act of inclusion is in clear violation of their constitutional rights under 5th Schedule and PESA. To which, the administration argued that this inclusion is for their benefit only. Transformation into a corporation will lead to high land prices, more employment avenues, Mayor will be an adivasi and different wards will be reserved in the wards for ST/SC population. Villagers further argued that this all will lead to them losing their culture and heritage. After a 2 hour long meeting, they were again given vague assurances of some further action and contemplation in future.

In the midst of all the dialogue and negotiations, the state continued to harass the villagers with the intention to break their spirit. In the coming days more women leaders of the manch were arrested.

"Madam, while the police can do anything with us (beating, abuse, filing false cases to frighten and oppress us, inflict injuries and humiliation, etc.) but why our protest movements and demonstrations are termed as criminal activities?", asked one of the villagers while talking to the FF team.

16th February, when the Fact Finding team reached sundargarh, all the

members went to the court as on the very day 12 women who were arrested were granted bail and to be released. But since they were unable to procure the bail amount in time, the release was further postponed by a day. On the 17th, finally all the 12 women were released on bail. As a result of the release, the villagers had organised a huge celebration in Jhartarang village where all the adivasis from neighbouring villages and Jagda Panchayat got together and congratulated the 12 women who remained strong throughout the time of their incarceration. This is when all the villagers narrated the events leading to the present day situation to the team.

12 women who were released on bail on the 17th February

At one end was the celebration of their struggle and on the other hand was a situation of panic. At the very moment when these women were released, the police started searching for Lily Kujur, a firebrand leader of the manch and George Tirkey. Both had to go under hiding for some time to avoid arrest as there are 4 pending FIR against them, just like against all the other villagers. Both of them had to skip this meeting/celebration.

It is to be noted that a day after the FFT left, Lily Kujur was arrested. She was released on bail on 7th March 2015.

Present Situation:

Since March 7th 2015, villagers have been on a continuous dharna in front of the Rourkela Municipal Corporation office in Sundergarh.¹⁰ On Wednesday 18th March, 2015, thousands of villagers under SZABM led by Birmitrapur MLA George Tirkey organised a dawn-to-dusk shutdown on Wednesday demanding revocation of the notification on Rourkela Municipal Corporation (RMC) and also for removal of Governor SC Jamir stating the Governor as he failed to protect the interest of tribal people.¹¹ On the same day, the issue was also discussed in the Odisha assembly. Party leaders of both Congress and BJP protested the inclusion stating that such a move by the state government's to include two tribal panchayats of Jagda and Jhartarang in the proposed Rourkela Municipal Corporation is in violation of Constitutional provisions under Fifth Schedule and Article 244 clause (1) of the Constitution. And the same cannot be done without holding *gram sabhas* until it obtains special permission from the President of

India.¹² SZABM plans to continue the present protest until the government decides to withdraw the notification.

Official Stand on the issue:

During the visit, FFT also met Additional District Magistrate, SP, TI-Brahmanitarang to understand the state's point of view on the issue of Municipal Corporation and the state's response to the people's agitation against it.

First meeting was with the ADM in Rourkela on the 19th February. ADM is the administrative head of the Rourkela. He made the following arguments justifying administrations act.

Agitation is being incited by the outsiders: The ADM stated that the opposition to the Corporation notification was coming only from Jagda and Brahmanitarang Panchayats. He reiterated time and again during our conversation that the protestors who are creating a law and order situation were not people from these two Panchayats but were outsiders. Locals are being threatened and that is why they are participating in the agitations. On being asked whether the annexation of these two Panchayats would lead to acquisition of land for urban infrastructure and residential colonies, the ADM claimed that urbanisation does not mean that the Government would acquire any lands. The purpose of annexation of Panchayats was to make available basic amenities and infrastructure like drinking water, roads, electricity, waste management, etc. and so the fear of losing land was baseless and according to him the protestors were misinformed.

Gram Sabha not required for clearance of Central Government Projects: On the question of conducting Gram Sabhas for taking consent of the people for annexation, since Sundargarh was a Scheduled Area, he was of the opinion that the Government had given the people time to file their objections which they had, and the Government had considered such objections and modified their CDP accordingly. The ADM clarified that he had himself compiled all the objections the people had. But when it was pointed out that seeking written objections cannot be the same as, or equivalent to, holding a Gram Sabha for taking the consent of people, the ADM reiterated that seeking written objections was the only space people had and that holding Gram Sabhas was not

mandatory for taking consent for any Central Government projects and that it was applicable only for Panchayat level works.

These villages are any ways not rural enough and has not much cultural practices: When it was shared that one of the major reasons for people's objection was that in a Corporation there would be no space for the growth of tribal political leadership and that tribal cultural practices and social organisations would be adversely influenced due to city culture, the ADM refuted these as untrue. He clarified that there would continue to be reservation for tribal people in urban local body elections and as for the culture, he further claimed that if one visit these panchayats one can clearly see that these are already enough urbanised and is not "rural enough" anymore and thus there is no question of the adivasis losing their culture to the urban culture. [It is to be noted that the state is using this entire baseless argument that these two panchayats i.e. Jagda and Jhartarang already have urban lifestyles to justify its act. On the next day, i.e. 19th we got one document from the Municipal Corporation office, which showed the area which were going to be included and showed figures for population, area, villagers dependent on agriculture etc. The table shows almost negligible number of villagers dependent on agriculture for living. When we showed the document to villagers, they claimed that these are wrong figures. They showed a document with Information on Land Particulars of villages of Jhartarang Panchayat, in that around 2062 ha of the land was either cultivated or irrigated land. They said that the land in their village is multi crop land and majority of the adivasis were dependent on the agriculture either directly or indirectly.]

Police response to agitation was justified as villagers broke the law: According to him, despite giving the target Panchayats adequate opportunity for submitting objections and holding several discussions with the SZAMB leaders to address their grievances, the protestors had taken law into their hands and created serious law and order situations by blocking the national highway and obstructing the movement of ambulances, school buses, etc. and therefore the police had to file cases against them and make several arrests in relation to 25th November 2014 road blockade. It became very

clear to the team that in the opinion of the administration, people's consent was not considered mandatory and that they considered the protests to be illegal and hence to be dealt with using only the law and order machinery. Using the similar argument, he also justified the act of the policemen on the morning of the economic blockade though he claimed no one was beaten up or injured. He asked us what would have been our response if we had to deal with such law and order situation.

Second meeting was on the 20th February with the Thanedar of the Brahmanitarang Thana to inquire about the cases filed against the people and also regarding the beatings of the men, women and children on the morning of the economic blockade.

The Officer in charge of Brahmanitarang Thana said that the villagers were agitating and had blocked school buses and ambulances. He mentioned that the buses of St Arnold's school were blocked during the rasta roko on the 20th of January when the economic blockade begun. The Principal of St. Arnold's School said that actually the school buses were blocked during the demonstrations on the 25th of November 2014. Thus, the pretext of blocking school buses used by the OC to justify the violence on the tribal villagers does not hold much water. According to the OC Upendra Pradhan, the villagers had become violent and were using 'weapons' during their demonstration. He also showed a stash of 'weapons' consisting of one old bow (the arrow was missing), a few lathis and one sickle. He showed videos collected by the police during those demonstrations. The police-videographer angled the camera such that only the demonstrating villagers are shown, 'armed' with brooms and sticks. The huge cavalry of armed forces have not been shown in the videos.

The OC also gave certain specifics of the criminal cases. He said that the case slapped on the 25th November 2014 numbered 193/2014 and read "700 others" because more than seven hundred people were a part of the demonstration.

Case no. 9/15 had been slapped after the 20th January 2015 demonstration of economic blockade. 11 people were arrested on that date. Charges of rioting have been framed. According to the OC, the Kukra Gate railway crossing was blocked for two

days. He claimed that since Section 144 was active during that time, which prohibits gathering of more than 5 people, these protests automatically becomes illegal.

USE AND MISUSE OF Section 144: When we inquired as to why and how was section 144 declared, he claimed that the same was done to prevent people from rioting. Notice of the same was given to the villagers on the night of the 19th. When asked, villagers claimed that no notice was ever given to them. Police claimed that on the night it was announced in all the villages through mikes. It is to be noted that it is a general practice of the villagers here to sleep by 8 and the administration is well aware of that, still the notice was given in this manner. Not just that, Section 144 was in place from 19th January to 16th February, almost a month to prevent any kind of village level meetings of the manch, according to the villagers.

He denied that any police officer ever went to village to stop them from participating in the protest.

Cases have also been filed at Arampali and Jalda police stations. In fact, 200 people were arrested at the Arampalli thana. GRP/Railway Police have also filed cases at TCI Chowk and Kukra Road. Mr. Pradhan claims very confidently that according to Supreme Court Guidelines, rasta-roko demonstrations can't be done. It is to be noted that in all these charge sheets, filed at different thanas several km from each other, have one name in common – that of George Tirkey, making him omnipresent! One of the cases also includes a murder charge! The OC said they are collecting evidence against him and are arresting his aides. According to him, the state has incurred a loss of Rs. 30 crores because of the agitation.

Telephonic Conversation with SP, Rourkela on 20th February 2015 : He gave a similar response. According to him the blockade was illegal and thus police was just doing its duty. He denied that the police had conducted any lathicharge. On being asked about why Section 144 had not been declared earlier to warn the alleged violators of 'peace and tranquility' he claimed that it was duly announced at night. The SP was heavily opinionated on what was right and wrong in democratic dissent or how people should raise their voices on being dispossessed of their rights, but when reminded about the due process and how the administration

and government were simply refusing to listen to the voices of objection, he was silent and offered no explanation. On being asked if he knew any police personnel who have been injured in the agitation, he said that none of them were hurt, but there was murderous intent among the protestors. It is relevant here, that 11 women were arrested on 20th January and most of them were above fifty years of age. The SP also stated that he was determined to quell any form of unrest in the future and would also be very strict about maintaining peace and order in the region.

Rourkela steel plant and past betrayal

During the entire, interaction with the villagers, one reason for the present opposition kept recurring was their past experience when the Rourkela Steel Plant was set up. George Turkey, present MLA, Birmitrapur, and one of the foremost leader of the Manch protesting against the inclusion added that one needs to understand the people's current outrage over this Corporation notification in the context of the earlier land acquisition done for RSP.

He explained that RSP had already displaced people of 92 villages under 32 mouzas (revenue circles) using a 1948 land acquisition act. Of 20,000 acres land acquired, the steel plant and RSP township was built over 15,000 acres, and the unutilised 5000 acres was returned to the State Government under the relevant provision of the Act. Reportedly the State Government, instead of returning the unutilised lands to the original owners, allegedly sold it at cheap rates to builders and real estate agents and also allowed illegal colonies like Gopabandhu Colony, Timber Colony, Chachend, Tarapur, etc. to come up on rest of the lands. These colonies are illegal, says Turkey, because they have been built on lands that were supposed to go back to the original land owners since they were not used for RSP's plant or its township. And till today the original land owners have neither got fair rehabilitation and resettlement support nor their unutilised lands back. Majority of the land losers continue to be asset less and surviving on daily wage labour or cultivation over small patches of land. Therefore now, when the people came to know about the annexation of their Panchayats for Rourkela Corporation, they feared that

whatever lands and homesteads they have would be snatched away from them in the name of building more residential colonies and commercial complexes. And that is why the people have decided to reject annexation and save their lands and villages from urban land contractors.

Findings and Recommendations:- Clearly there is an absolute lack of understanding of the Constitutional scheme of the Scheduled areas and of PESA among the local administration, and there is insensitivity to the concrete threats the tribals are apprehending from urbanization. Thus a situation of alienation of the tribals has taken place which requires to be handled by administrators having such understanding and sensitivity. Administration has clearly violated the procedures for taking consent of the concerned Gram Sabhas as the villagers came to know of the Notification of inclusion only belatedly through the internet. No Notification was ever sent to the Panchayats or published in local newspapers of wide circulation so that the villagers could access the information about the Notification. Thus the entire Notification process requires to be re conducted in a truly democratic spirit. Despite the fact that the villagers had registered their objections and that they have organised themselves into a representative body, the administration did not consider it necessary to hold effective or serious discussions to resolve the issue, rather the attitude has been as if the objections are a mere formality and the representative body is a criminal entity. No ground work has been done to study the impact of the urbanization on the life and livelihoods of the affected tribals. It is shocking that even *Sarpanches*, and sitting and erstwhile MLAs are all being considered as "trouble makers" rather than representatives of the people who can participate in a dialogue. This resulting situation of turning a debate on what constitutes development into a law and order problem must lie squarely at the door of the administration and government.

All leaders and active members of the Sundergarh Zila Adivasi Moolvasi Bachao Manch conveyed that they fear for their lives. We heard that reportedly the senior officials were planning to use the National Security Act against George Turkey, a sitting adivasi MLA as if he was a die-hard

criminal or a terrorist. The criminal justice system is being abused to criminalize dissent.

In these circumstances, a situation of panic exists among the villagers and continues due to the continuing surveillance and repression, arbitrary arrests and fabricated cases against most frontline leaders. Particularly the fear of persecution is accentuated because of the existing FIRs against unknown persons and particularly vague FIRs against "700 others". The Government of Odisha should review the criminal cases that have been registered and quash vague and politically motivated **FIRs**.

No FIR has yet been registered against the police officers who physically harassed the women and men on the day of the economic blockade. The State must register FIRs and investigate objectively into the complaints of the people against police high-handedness to instil confidence in the people regarding the impartiality of the criminal justice system.

The new PDS scheme is being used as a way of coercing the villagers to support the Corporation, one of the strategies being used by the Government, apart from arbitrary arrests and slapping of false and fabricated cases on leaders of SZAMBM, is forceful registration of people in the targeted Panchayats for new PDS cards in the Wards of the Corporation under the Food Security Act. The new cards being distributed have 'Mahanagar palika' inscribed on it, though the new Rourkela Municipal Corporation (including these panchayats) has not been formed yet. The people opposing the RMC (Rourkela Municipal Corporation) feel this is ploy by the administration to show the acceptance of proposed RMC among people. And thus, entire villages have been protesting and have not been accepting any ration cards and preventing any distribution of the same. Villagers say, "What will we do with our ration cards when we lose our land and source of livelihood". The Government is now reportedly using security platoons to set up the registration camps and using force to get people to register their names for new PDS cards. The villagers also told us that the Government has been reportedly getting ward members and anganwadi workers to frighten the villagers that if they did not register for new PDS cards now they would never get any cards later on.

Thus, when the issue of inclusion/annexation is still under dispute, the PDS scheme should be delinked from any decision in this regard.

From the study of other similar situations and also the land use pattern in the Rourkela Municipality, it appears that the apprehensions of the tribal people are well founded that the reason for annexing Jhartarang, Jagda and Balijodi is so that that land can be sold or leased to builders, real estate agents, etc. in the name of creating better infrastructure and basic amenities. The issue of urbanisation in the Scheduled Areas needs to be considered at the highest possible level keeping in mind the Second Bhuria Committee Report, the lapsed MESA Bill and the concrete experiences of the tribal people in the urban centres of Scheduled areas. Adequate protection to the tribal communities requires to be provided in the urban areas.

We note with the concern the fact that

the issues of the Sundergarh tribals have been totally ignored by.., the mainstream national media apart from the reports of delay of trains on the Howrah – Mumbai line for some 48 hours when the economic blockade was going on. The neglect of the other side of the development debate in the public domain does not augur well for our democracy.

The People's Union for Civil Liberties through its Odisha members has also raised the issues of police repression and false cases observed during this fact finding trip with the National Human Rights Commission. Since this case is indeed a test of how the tribal areas are going to face urbanization and industrialization in the coming days, we hope that the NHRC will intervene promptly and effectively to help establish peace and justice in this scheduled area.

Sharanya Nayak, Isha Khandelwal, Dr. PM Antony, Atindriyo Chakrabarty, Ashish Beck, Pranab Doley.

Report Send by Isha Khandelwal

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