

## FOREST AND TRIBAL RIGHTS: CASE STUDY ON VEDANTA AND POSCO

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Tribe has the largest population in the world. Tribal people mainly live in hilly areas and mountain areas instead of fertile plains. Tribe is interlink with the forest because they reside in forest areas eventually tribe have rights over the forest. Tribes have rights to use forest resources and land. Tribal people have right to use clean water, food, shelter, fruits, shelter and other things of the forest. They have not used only such resources but also preserve them. But government make policies and law for conserve the forest area for economic development and expel the tribes from forest land. There also impose restriction on tribal people to use forest land and resources .tribe is independent on the forest because they used to live in forest, if there is deny of their rights on forest then it causes injustice.

India is land of tribes. In India there is scheduled tribe which is also known as Adhivasi which constitute world's largest population in the world. There are different terminology used for tribe in different countries.in India, schedule tribe found in Andhra Pradesh, odisha, Uttar Pradesh, Himachal Pradesh and Andaman and Nicobar islands. The Government of India too made many forest laws which conserve the forest area and impose restriction on the use and access area on scheduled area. With passage of time, government of India passed the "Forest Rights Act 2006" which provide rights to the scheduled tribes on the forest land and utilize resources. In this paper I would analysis the legal framework of forest rights of tribe in India. This research work also discusses the case Vedanta and POSCO which violate the forest rights of tribal people of odisha state. This case study stated how the Vedanta and POSCO Corporation started their project plans and displaced the tribal dwellers from their land and impact of these projects on environment. This research paper would contain the challenges faced by the tribal people on the claim of forest rights. The main objective of this reaserch is to analysis the forest laws which caused injustice by imposing restriction on tribal people's rights on utilization of forest land and to study how Vedanta and POSCO Corporation violate the tribal rights of odisha tribes.

## **IMPLICATIONS OF TRIBAL RIGHTS AND FOREST LAWS**

There are many laws which restrict the tribe rights and lay down much condition on the utilization of sources of forests. But there is 'Forest Rights Act 2006' which provides forest rights to the tribal dwellers and gives justice to the forest dwellers. Evolution of forest laws can be traced back to before British period in India.

### **FOREST LAWS IN PRE COLONIAL PERIOD IN INDIA**

In the British India, the history of forest laws can be traced in "Forest Act of 1864". This act gives power to British India to declare any forest land as government forest. Then this process is further strengthened in 'The forest 1878 Act' which declare some areas of forest as 'protected forest', 'reserved forests' and 'village forest'. Then there is re-iterated the regulation of rights and restriction of privileges of 'user' in forest areas for public good under the National Forest Policy 1894. Then "Land acquisition Act of 1894" came into enforces which permit the compulsory acquisition of land for 'public purpose'.<sup>1</sup>

### **FOREST LAWS IN POST COLONIAL PERIOD**

After independence there are many laws came into existence which restrict the rights of the tribe on the forests and give control of the forest into hand of government. These laws can be explained in following ways:

#### **1. National Forest Policy of 1952:**

This act confers the centralized control of forest to the government for commercially exploiting minor forest produce and concentrate on protecting forest resource. This policy lays stress on the basic needs of forest user groups and conserves the forest for maintaining environment stability. The national forest policy was revised again in 1988 which involve the community for the protection of forests.<sup>2</sup>

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<sup>1</sup> Samrathan- Centre for Development Support, "Recognition of Community Rights under Challenges and way forward Madhya Pradesh and Chhattisgarh: Forest rights Act in Madhya Pradesh and Chhattisgarh" UNDP Final Report July 2011 available at < <http://www.undp.org/content/dam/india/docs/DG/recognition-of-community-rights-under-forest-rights-act-in-madhya-pradesh-and-chhattisgarh-challenges-and-way-forward.pdf>> (Accessed on October 20,2017)

<sup>2</sup>Ministry of environment and forest ,*National forest policy* available at < <http://www.moef.nic.in/sites/default/files/jfm/jfm/html/national.htm>> (Accessed on October 20,2017)

## 2. 'Wildlife Protection Act 1972'

Section 18 of the 'Wildlife Protection Act 1972' provides declaration of sanctuaries of forest area. However this provision excludes exempts area from protects area. This exempts area include the reserved forest. This reserved forest deals with section 19 to 25 with settlement of rights of people. There is bad in law as this provision impose additional restriction like no one can entry on protected area and grazing over this land.<sup>3</sup>

## 3. 'Forest Conservation Act 1980'

Section 2 of Act imposes restriction on the derservation of forests or use of forest lands for non-forest purpose .This provision takes away the rights of tribe on forest as that any forest land can dereservation for non-forest purpose.

## 4. 'Forest Rights Act 2006'

The "Forest Rights Act 2006" representing a legislative landmark in the history of forest laws in India was passed by India's "United Progressive Alliance (UPA)" government to restore the rights of "forest-dwelling scheduled tribes" and "other traditional forest dwellers" to control and use natural resources. This act aims to recognise people's ownership and land-use rights at the individual and community level and, at the same time, to integrate conservation. Scholars and activists in India have praised the Act as a "testimony to the power of people's movements to participate in and push the legislating process" and an opportunity to correct the "historical injustice", as stated in the Act's preamble, committed against India's forest dwellers.<sup>4</sup>

### **CASE STUDY: VEDANTA AND POSCO**

There is two case studies related to forest rights first one is Vedanta and another one is POSCO. The research work will analyse the Vedanta and POSCO Corporation violated the forest rights of tribal dwellers by displacing from their land. This chapter provide the detailed information of events of these cases.

### **VEDANTA CASE STUDY**

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<sup>3</sup> R.K.Rao and S. R Sankaran, 'Forest Myths, Jungle Laws and Social Justice' (2003) Economic & Political Weekly

<sup>4</sup> Ursula Munster and Suma Vishnudas, 'In the Jungle of Law Adivasi Rights and Implementation of Forest Rights Act in Kerala' (2012) 19 Economic & Political Weekly 38

**Parties involved in the matter:**

• **Dongria kondh**

Dongria Kondh referred to as a “primitive tribal group”. The term “primitive” is derogatory, wrong and dangerous. Since 2006, the Government of India has recommended that the term be avoided and that tribes, such as the Dongria Kondh, should be referred to as Particularly Vulnerable Tribal Groups. Internationally, the use of the term has been discouraged for many years. Back in 2007, the Association of Social Anthropologists advised that the use of the term primitive is damaging and is used as a pretext for depriving people of their lands and rights.<sup>5</sup>

• **Vedanta company**

In 1976, Vedanta group of company was established by Anil Agarwal. In 2003, this company was listed in London Stock Exchange and registered under the Companies Act 2006. The company has its offices in London. Vedanta resources has a work force of 30 000, and in the year 2013 reported revenue of USD15 billion and USD 46 billion total assets. . The company has six direct subsidiaries and around 90 indirect subsidiaries globally. Headquarter of the company are in Mumbai. The parent company and its subsidiaries have controversial human rights records in a number of countries.<sup>6</sup>

**SUMMARY OF EVENTS**

**Proposal for project (April, 1997)**

In April 1997 a memorandum of understanding as signed between sterile industries and odisha government for the establishment of the mining and refining project at lanjigarh and kalahandi district of odisha.

**Protest by Dongria kondh (February, 2003)**

The vendata proposed mining lease which included plans to extract bauxite from the niyamgiri hills. The niyamgiri hills constitute the only traditional home to the dongria kondh and kutia kondh. The land which is allotted to vendata is come under ‘scheduled area’ .this area cannot be transferred to private companies without the consent of affected tribal peoples. The Vedanta

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<sup>5</sup> Stephen Corry, ‘Dongria Kondh’ (2012) 47(52) Economic & Political weekly

<sup>6</sup> Dr Shelley Marshall & Dr Samantha Balaton-Chrimes, Tribal Claims Against the Vedanta Bauxite Mine in Niyamgiri, India, NON-JUDICIAL REDRESS MECHANISMS REPORT SERIES 9

operation first emerged in 2002, when the company began acquiring land for their aluminium refinery project in Lanjigarh. The one million ton per year alumina refinery displaced some villages in Lanjigarh. The Lanjigarh refinery worked mostly with costly and polluting bauxite coming by train and truck from distant places.<sup>7</sup>

Vedanta started their project with the form of road and building. They construct road and building on the ancestral land of tribal people. There is great impact in tribal people's life in result of action of this company. Many dongria kondh were not aware of this plan.

The news of niyamgiri case spread in India. Then many activist filed a number of petition with government which reached to the Supreme Court of India. Many research teams reached the niyamgiri hills. These societies conduct social and environment impact assessment and allegation about Vedanta activities. In this Vedanta Company persuade Dongria Kondh villagers vacate the land and if they vacate the land then they get many benefits and compensation, development.

#### **Petition in Supreme Court (2004)**

The mine then became fixed in a state of uncertainty, delayed by multiple administrative and judicial claims. In 2004, three individuals filed petitions in the Supreme Court requesting cancellation environmental clearance for the alumina refinery. These individuals were drawn from local environmental, wilderness and human rights groups. One of these individuals was Wildlife Society's Biswajit Monhanty.

#### **Forest Rights Act 2006**

On 21 September 2005, the Central empowered Committee (herein after called CEC) a committee of the Supreme Court recommends that there had been violation of the "Forest Conservation Act 1980" and the Vedanta company plan for forest clearance should be refused. The project proponent misled the Forest advisory Committee

In 2005, the CEC recommended against mining niyamgiri on environmental grounds. Despite the report, the Supreme Court quashed the petition. A 2006 act of Parliament of India tipped the legal balance in favour of the Dongria kondh, strengthening their cause. After many years of campaigning by advisasi (tribal) groups across India, the "Forest Rights Act 2006" was

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<sup>7</sup> ibid

enacted. In India first time this act granted the right to hold and live in forest land to the member of forest dwellers and forest tribe. It also provided self-cultivation on forestland. This law reversed, on paper, colonial forest regime. As well as offering protection for forest dwellers, the act attempted to distribute power between communities and bureaucracy. Remarkably, it set out a new democratic system of forest governance.

**First judgement of Supreme Court (23 November 2007):**

Then the Company lodges an appeal of Supreme Court of India decision. In the first judgement the Supreme Court delivered its judgement and issued order laying down condition before the forest clearance should be granted.

**Second Judgement (8 August 2008):**

The Supreme Court gives permission forest clearance for Vedanta project. The court also imposes certain condition. These conditions are imposed in the light of sustainable development of local communities and for protection of environment and conservation. The court said that next step would be for Ministry of environment & Forest to consider this matter.

**Forest Advisory Committee (August 10, 2009)**

Then the meeting is held in which forest advisory committee recommended that final forest clearance in the hand of ministry of environment & forest. The committee also said that before the granting final clearance firstly special reference given to tribal rights on forest land. Then the committee decide to carry out inspection and constitute an expert group.<sup>8</sup>

The genesis of the landmark referendums lies in a directive of the Union Ministry of Environment and Forests in August 2010 rejecting forest clearance to the bauxite mining project. In April, the Supreme Court ordered the state government to organise gram sabhas

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<sup>8</sup> Ministry of Environment and Forests, 2010 “*Decision on grant of forest clearance in Kalhandi and Rayagada Districts of Orissa for the Proposal submitted by the Orissa Mining Corporation Ltd. (OMC) for Bauxite Mining in Lanjigarh Bauxite Mines (24 August, 2010)*” Available at <<http://moef.nic.in/downloads/public-information/Vedanta-24082010.pdf>> (Accessed on October 19,2017)

under the Forest Rights Act of 2006 to determine the views of forest dwellers on whether mining should be allowed or not.<sup>9</sup>

**Response of Dongria Kondh (26 February 2010):**

Dongria kondh said that the Niyamgiri hills are gods for them. Tribal gather bananas, roots, vegetables, palm juice, and so on from this mountain. The tribal rose to protect Niyamgiri from Vedanta by blocking streets. Individuals from the tribe advanced against Vedanta Resources to keep the mining organization from decimating their holy mountain and woodlands. Their voices were conveyed crosswise over by grassroots associations, for example, Niyamgiri Suraskha Samiti and universal associations, for example, Survival International, Action Aid and Amnesty Universal crafted by these associations and the data that streamed about the community's battles helped draw consideration worldwide with neighbourhood, national and global media being drawn into the talk. Pardon International pointed the finger at Vedanta for abusing "human rights to water and wellbeing" as an after effect of poor waste administration and contamination from Vedanta. The wellsprings of water were additionally blended with bauxite tidy.<sup>10</sup> Due to violations of the "Forest Conservation Act" two Ministry of environment and Forest Committees are formed to investigate. These committees find violation of forestry, environmental and tribal rights.

**Report of Saxena Committee (August 2010)**

On 23 August, 2010, the Saxena committee's report was placed before the Forest Advisory Committee, which, having found compelling and significant evidence of prima facie violations of the 'Forest Rights Act' 'Forest Conservation Act' and 'Environmental (Protection) Act' recommended that any clearance would thus be in contravention of this legislation.

Then the tribe won a triumph against Vedanta when India's government announced that Vedanta won't be permitted to mine in the Niyamgiri slopes. In October 2010 the Indian

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<sup>9</sup> Rule of thumb, Tribal in Orissa's Niyamgiri hills reject Vedanta's bauxite mining project in a landmark referendum, Edition: 2013 available at <<http://www.businessstoday.in/magazine/features/orissa-niyamgiri-rejects-vedanta-entry-impact-reasons/story/197972.html>> (Accessed on October 19,2017)

<sup>10</sup>Maitreyee Mishra ' Communicating the True Ecological Cost of Development: Addressing Development and Environment in Orissa, India, International conference on Future Imperatives of Communication and Information for Development and Social Change'( 2010)

government blocked Vedanta from extending its alumina refinery at Lanjigarh, at the foot of the Niyamgiri slopes for abusing the “Ecological Impact Assessment (EIA) warning”.<sup>11</sup>

**Appeal to Supreme Court (11 July 2011):**

MOEF withdraws the ‘environmental clearance’ for the project. This decision is appeal by the company to the Supreme Court.

**Supreme Court decision (18 April 2013):**

The Supreme Court sends the decision regarding the mine clearance to the Gram Sabha (the local tribal councils). The Supreme Court said that the Dongria Kondh are the primitive groups and they have customary right to worship the mountains. The Supreme Court asked the state government to take consent of the village people on the legal ground under Forest Rights Act 2006. The court said that it is in hand of village decide whether POSCO mining project violate their religious rights or not. Then Kalahandi and Rayagada district administrations notified that village community had already claims are submitted under the forest Rights Act 2006 and settled with land tenures.

Subsequently, in gram sabha after gram sabha all the villagers, vociferously said “the entire 240 sq. km of the Niyamgiri hill range is ours” and denied they had ever made all the previous individual and community claims under FRA that they had submitted to their respective district administrations just weeks earlier. In the last gram sabha on August 19 at Jarapa village, Wanjelika Jambu, one of the 12 voters who participated spoke for all. He said, “We don’t need any land ownership deed from the government, we need Niyamgiri only.”<sup>12</sup> 12 Gram Sabhas vote unanimously against the mine.

**Decision of MOEF (8 January 2014):**

The Ministry of environment and Forests reiterated its decision to reject approval under the “Forest Conservation Act” for diversion of 660749 hectares of forest land to Orissa Mining Corporation for mining of bauxite ore in Lanjigarh Bauxite reserve in Kalahandi and Rayagada district.

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<sup>11</sup> Ibid

<sup>12</sup> Manipadma Jena, Voices from Niyamgiri, E.P.W, Vol. 48, Issue No. 35, 31 Aug, 2013



## **POSCO CASE STUDY**

### **Proposal of Project (2005)**

POSCO (Pohang Steel Company) is South Korean company and its headquarters in South Korea. It is fifth largest steel producer company in the world. In June 2005, Memorandum of understanding was signed between POSCO and odisha government for establishment of steel mill at paradip which is in jagatsinghpur district. Proposal was made that construction of project will start in 2011. The area which is chose for establishment of steel plant is forest land. Proposal of steel plant raise fear in many mind of forest villagers that it would damage to their livelihood as well as environment.<sup>13</sup>

### **Posco Pratirodh Sangram Samiti (2006)**

Posco Pratirodh Sangram Samiti (herein after called PPSS) which is for people organisation was formed in 2005. The main purpose of formation of this committee to oppose the POSCO project. After that Forest Rights Act 2006 was come into enforce in India. The Posco Pratirodh Sangram Committee said that which land is claimed by the posco project and villagers which live this land are considered as 'other forest dwellers'. According to the Forest Rights Act 2006 forest land cannot be acquired without their consent. Then Blockade was declared in three gram sabha village which effected by POSCO project.<sup>14</sup>

### **Protest by POSCO Pratirodh Sangram Samiti ( 2007)**

The Police goonda attacked PPSS dharna at entry point with bombs. Many people were injured. The heat was turned on. The police arguing with villagers over the barricade in entry point.

### **Forest clearance (2008)**

The Supreme Court of India considers the forest clearance recommendation. The Supreme Court asked the state government take effective steps to forest clearance so that company

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<sup>13</sup> Maitreyee Mishra "Communicating the True Ecological Cost of Development: Addressing Development and Environment in Orissa, India, Paper submitted for International Conference on Future Imperatives of Communication and Information for Development and Social Change" ( 2010)

<sup>14</sup> ibid

continue their project. But there is no final clearance is granted. Supreme Court also gives direction to MOEF to proceed in accordance with law.<sup>15</sup>

### **Approval of MOEF (December 2009)**

In December 2009, MOEF gave the approval for Pasco's steel plant. Then MOEF granted final clearance. PPSS writes a letter to ministry against illegal action. Many people protested. Communist party Indian leader writes letter to prime minister. He stated how the MOEF and odisha government violated the law.

### **Saxena Report Committee (August 2010)**

The MOEF constituted three member committee and it visit the area. Committee appoint for investing the working of Forest Rights Act 2006 in this area. Committee submit its report and stated how Odisha government fails to implement the FRA .In July, 2010 Odisha government taking over forest land. But however such acquisition declared illegal later. PPSS holds public rally and burns copies of new compensation package.<sup>16</sup> The acquisition work was halted as a result of a report by a central government committee (NC Saxena Committee) to look at the implementation of the Forest Rights Act.

### **Meena Gupta Committee (2010):**

The MOEF issues order to Odisha government to stop work on POSCO but allowed forest clearance. PPSS writes a letter to MOEF demands of withdrawing illegal forest clearance.

MOEF constituted Meena Gupta Committee. The Scope of new committee expanded to investigation of violation of all laws, government procedures and rules. The committee submit its report on October 18, 2011 and said that forest clearance was illegal and "Forest Right Act" is not properly implemented in this area. The committee submit its report before forest advisory committee. Forest Advisory committee recommended 'temporary withdrawal of 'of forest clearance. "The Meena gupta committee feels that POSCO-India Pt. Ltd has not been able to address all the issues. There are a number of serious lapses and violations, including

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<sup>15</sup> ibid

<sup>16</sup> Mining Zone Peoples' Solidarity Group, "Iron and steel : The POSCO india story"2010 available at <<http://miningzone.org/wp-content/uploads/2010/10/Iron-and-Steal.pdf>> (Accessed on October 23,2017)

suppression of facts. The environment clearance given by the MOEF should therefore be revoked forthwith.”<sup>17</sup> But however MOEF ignore report of committee and said POSCO can go ahead with their plans and granted forest clearance. Many affected villages take a resolution against this project for diversion of their forest land and implementation of ‘Forest Rights Act 2006’.

In 2011, MOEF asked the Odisha government to respond all the resolution taken by PPSS. State government said that all resolution taken is invalid. PPSS write a letter to MOEF and give evidence all resolution are valid. MOEF stopped land acquisition on POSCO.

### **CONCLUSION**

By discussing above all it can be concluded that Forest Rights Act 2006 is major step which is taken by Ministry of Environment & Forest to render rights to the tribal dwellers on the forest land. This research work analyse the forest law provision which restrict the forest dwellers on utilization of forest resources but also study such law which confers rights to tribal dwellers on the forest land. .

- Legislation passed Forest Rights Act 2006 but there is lacuna to implementation of this act. There is lot of ambiguities in formation of forest rights committee and panchayat system is not strong in many states so there is not regularity in implementation of the act. There should be regular authority for proper implementation of act.
- Gram Sabha and forest right committee does not how to keep records and documents of all types of claims of rights. There is lack of awareness among tribal villagers and government officials about the forest rights provided by law.
- Forest Rights Act provides thirteen rights to the forest dwellers on forest but only two rights are claimed by the people. So there should be awareness among the tribal dwellers about their rights on the forest land.
- This research work also include case study of Vedanta and POSCO corporation in Odisha which violate the forest rights act 2006 and Forest Conservation Act 2006 , Environment Protection Act 1986. These corporations displaced the tribal villagers from their land for

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<sup>17</sup> Ms.Meena gupta, MINISTRY OF ENVIRONMENT AND FORESTS Government of India New Delhi, Report of the Committee Constituted to Investigate into the proposal submitted by POSCO India Pvt. Limited for establishment of an Integrated Steel Plant and Captive Port in Jagatsinghpur District, Orissa October 18, 2010 available at < <http://www.moef.nic.in/downloads/public-information/report-committee-posco.pdf>> (Accessed on October 23, 2017)

the establishment of their industries. In these cases the tribal rights violated and they faced many difficulties. After these cases analysis there is concluded that for acquiring any forest land which belong to tribal, protect the forest rights of such dwellers.

