

INDIGENOUS ADIVASI TRADITION AS CRIME!
ADIVASI TRADITION OF DISPUTE-RESOLUTION IS
MADE OUT AS CRIMINAL OFFENCE
IN THE INDIAN PENAL CODE
(IN THE CONTEXT OF COAL MINING IN SCHEDULED AREAS

BY PRIVATE COMPANY IN JHARKHAND)

STAN SWAMY

The Indigenous Adivasi Community has had centuries-old tradition of dispensing justice at village/area level. The traditional village headman has the authority to settle village-level disputes. He calls village meeting, summons the disputing parties, discusses the case in question, obtains a consensus-decision on the matter from all assembled and pronounces the community's judgement which both parties are expected to accept. This may include punishment to the erring party in the form of fine in cash or kind and in extreme situations even social ostracism from the village community. In case the guilty party refuses to accept the verdict of the village community, then it is referred to the area headman responsible for 20 to 30 villages who together with the all the village-heads in his jurisdiction summons the concerned parties, examines the case and arrives at a consensus-decision which the parties have to accept. And in rare cases where even this decision is unacceptable to either party, three area-headmen representing about 90 to 100 villages gather together and issue their final verdict which has necessarily to be accepted by the disputing parties. Refusal to accept would be dealt with severely leading to even physical ostracism. Such is the sound, democratic process of resolving disputes in Adivasi society. The most significant factor is the consensus-decision making process so that individual prejudice, lack of competence of some persons etc. are taken care of and collective wisdom is expressed.

This tradition of the Adivasi People was formally acknowledged by the Indian Parliament when in December 1996 it passed 'The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996' wherein in Section 4 (d) it affirms "every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution".

Adivasi tradition made into a crime: In November 2002 the Jharkhand Government issued notification for land acquisition in nine tribal villages of Pachwara Central Block, within the scheduled area of Pakur Dt. for captive coal mining to supply coal to the power plants of Punjab State Electricity Board (PSEB). The captive mining will be done by a private company, PANEM Coal Mines Limited. Open cast mining will be done in 11 square kilometers of land which includes:

- I. Raiyati land : 640 hectares
- II. Forest : 360 hectare
- III. Homestead : 2 hectares
- IV. Waste land : 15 hectares
- V. Nala, River : 34 hectares
- VI. Road : 28 hectares
- VII. Grazing land : 22 hectares

All the above agreements between Jharkhand Govt., PSEB and PANEM company were made without any reference to the Tribal People affected by this mining project. Then the Land Acquisition Dept. issued Notification No 4 on 13-11-2002 in the local newspapers to which the Gram Sabha of Pachwara sent a letter on 9-12-02 to the concerned authorities reminding them of Panchayat Raj (Extension to Scheduled Areas) Act, 1996, according to which prior consultation with Gram Sabha on any project involving land acquisition, displacement & rehabilitation in Scheduled Areas is a must (Section 4(i) of the Act). There was no response from the Govt.

Then again the Govt. issued Notification No 6 in local newspapers on 14-5-03 announcing the proposed acquisition of plot nos. The people again responded on 2-7-03 to the effect that they demand a dialogue with concerned Gram Sabhas. This communication was sent to concerned officials by Registered Post. This letter was returned to them on 23-7-03 with a note "Refused" by the post man. In the meantime, the Govt. has issued Notification No 8 as per which the people have been informed that measurement of those plots of land proposed to be acquired is to take place. People have now hand-delivered a letter on 25-7-03 to the officials demanding explanation for their Refusal of the previous letter. Response, if any, is still being awaited.

The above-described action of the Govt. goes against the prescription of Sec. 53 of Santal Parganas Tenancy (Supplementary Provisions) Act, 1949, which enjoins the Deputy Commissioner "to issue notice to the raiyats and other persons interested to appear before him and to file objections, if any..." Let it be noted that the Deputy Commissioner of Pakur Dt., has not issued any such notice to the raiyats as of 25-11-03. Nor has he entertained any of their objections.

All that the people are demanding from the Govt. is a dialogue through which they will come to know the purpose, the use of their to-be-acquired land, terms of rehabilitation / compensation etc. And this the Govt. refuses to oblige. This whole process adopted by the Govt. is unconstitutional and illegal.

Hence the village-heads of the area decided they would not allow any outsider, be it Govt. officials, PANEM company personnel, into the area by putting up manned barricades.

All the nine villages presently affected and about 35 surrounding villages which will be affected in future stand united in this action. In the meantime, PANEM company is trying to weaken this united struggle by buying off some persons by money and promise of jobs. Hence the Pargana and the Manjhis of the area deemed it necessary to summon such deviants before their traditional court, established their guilt, levied a fine as punishment and issued a warning to the effect that if they would not mend their ways more serious action would be taken against them.

Now the local representatives of PANEM company persuaded one such person to file an FIR against the tribal chiefs in the District Sessions Court and all the village heads of the nine villages including a venerable 74 year-old Pargana (area-headman) were arrested. The charge-sheet includes offences such as (IPC No: 386 implying forcible extortion and No: 34 meaning group culpability of all the eight Manjhis and one Pargana). The whole group applied for bail in Pakur District Court. All of them got bail. But the police retained one person who happens to be the most outspoken of them all. Other charges have been added against him, including kidnapping and threat to kill. When he applied for bail it was rejected on the ground that these are non-bailable offences. That good man languished in jail for over 18 months before he could be taken out on bail. His and the other tribal chiefs' guilt is that they dispensed justice as per their tradition of dispensing justice.

This situation calls into question as to where the Indigenous Adivasi People of Jharkhand and their democratic tradition of dispensing justice stand before the government's administration, the law-and-order forces and the judiciary. While on the other hand the recently enacted Parliamentary Acts and the recently passed judgements of the Supreme Court unconditionally uphold that "every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution". Yet on the other hand the State & District level officials, the District Courts and local Police are either ignorant of the Parliamentary & Judicial provisions or deliberately ignore them.

In such a situation, the only rational alternative for social movements is not to look up to Law or its enforcing instrumentalities to get justice but to take the law into their hands. And the Law that they will take into their hands will not be the written Law of our Parliamentary Democracy but the unwritten Law of their traditions, customs.