

Tribal Land Rights and Kotgarh Wild Life Sanctuary in Odisha- Issues, And Concerns

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ABSTRACT:

Abstract : *Most of the Forest Reservation in Kandhamal subdivision was carried out before Revenue Survey and Settlement of land rights was finalized consequences seems to be that in absence of recognized rights in unsurveyed areas, the Reservation of forests seems to have ignored tribal settlements interspersed within these forests. The problem seems to have been aggravated because even proper physical verification of the areas proposed to be declared as Reserve Forests wasn't taken up to ensure whether settlements existed within these RFs. Govt. has banned shifting cultivation and seasonal collection of Minor Forest Produce (MFP) since 1996, the two major sources of income. As regular Survey/Settlement has not been made, the rights of the tribal were not transferred to the tribal even if they have been cultivating since long. As a result a large tract of land ceded away from the tribals, making them more vulnerable to different situations.*

Keywords: Survey and Settlement, Tribal, Sanctuary, Forest right, Forest Village and Minor Forest Produce

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I. INTRODUCTION

Prior to the enactment of the Forest Rights Bill, in an affidavit to the Supreme Court of India on 21 June, 2004, Government of India made a very significant admission that **'the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified'**. This marked a historic departure from the colonial perspective that has characterized state regulations of forests, which regards forests as preserves of nature that necessarily should ideally be devoid of human habitation; and which regards the state's role as the sole legal and natural monopolistic guardian of the country's forest wealth.

The Indian Forest Act, 1927, the Wild Life Protection Act, 1972 and the Forest Conservation Act, 1980, are all based on the common principle that **"any human 'interference' in a forest ecosystem would lead to its destruction"**. This legal perspective **ignores that tribal groups also form an integral and natural part of this ecosystem, both surviving from the forest and at the same time preserving it.** Indeed, just prior to its admission to the highest court of the land, the Indian government had ordered on 3 May, 2002 the eviction of all forest encroachers', leading in just four months to the expulsion of around 300,000 impoverished cultivators from over 152,000 hectares. Mass protests and destitution finally persuaded the Government of India to introduce in Parliament on 13th **December**, 2005, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 and the rest is a sigh of relief to a considerable extent.

The National Forest Policy 1988 preferred to recognize forest dwelling communities as primary stake holders in forests and involve them in the conservation process. At clause 4.3.4.2 the Forest Policy reads- **'The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bona fide use of the communities living within and around forest areas, specially the tribals'**. The policy statements, notifications and judicial affidavits of the Government of India after 1988 have consistently pushed this agenda forward. On 1 June 1990, the Ministry of Environment and Forests (MoEF) notified that the state was encouraged to take full advantage of the expertise of village communities and voluntary agencies for regeneration of degraded forest lands. Of crucial significance are the circulars of 18 September 1990 issued by the MoEF. These circulars suggest **guidelines for state governments to contain encroachment, review disputed claims on forest lands, review pattas, leases and grants involving forest lands, convert forest villages into revenue villages and settle other old habitations.** Since its announcement, the Forest Right bill has raised fears that India's depleted and fragile forests would be

subject to further destruction by the large-scale influx of tribal people. It is important to dispel this notion by emphasizing the fact that, the bill only targets Scheduled Tribes who lived in forests located within Scheduled Areas before the Forest Conservation Act, 1980 entered into force. Therefore, only those tribal communities who lived in forests and were affected or evicted by the FCA can claim forest rights under the bill.

The modern protection of forests and conservation in India has turned on the principle of exclusion. This means that communities who have historically been a part of the forest and who are dependent upon it for their survival and livelihood have been evicted to make it pristine for flora and fauna. The enactment of laws to regulate forests, instead of managing their conservation, is a continuing legacy of India's colonial past. The colonial state saw in the exploitation of forests the opportunity for wealth and thus created laws, not to preserve ecological integrity but to protect the state's monopolistic access to forest resources. Forest-dwelling communities were evicted from their homes and livelihoods leading to unrest and agitation.

Independent India's conception of development and national good has been no different, and has resulted in widespread environmental degradation and violent marginalization of forest-dwelling communities. In the last twenty years however, a number of laws purporting to protect India's ecological and environmental integrity have been enacted. This conception of the environment continues to see forests as preserves of nature necessarily devoid of human habitation and reiterates the state's role as the monopolistic guardian. Thus, the Indian Forest Act, 1927 ('IFA'), the Wild Life Protection Act, 1972 ('WLPA'), and the Forest Conservation Act, 1980 ('FCA'), have been premised on the misconception that any human interference in a forest ecosystem would lead to its destruction, failing to **realize that tribal groups also form an integral and natural part of this ecosystem, living off the forest and preserving it**. On this backdrop of the so called **conservationists** approach, Kotgarh Wild Life Sanctuary has been declared under Section-18 of the Wild Life Protection Act-1972 vide (FFAH) Dept. Notification No-81-30253 dated 3rd Dec.1981 for the purpose of **protection, propagation, development and research on wildlife**.

II. KANDHAMAL (ODISHA)

The present Kandhamal sub-division was an integral part of Boudh from time immemorial till 1855. The earliest history of this area is gleaned from a number of copper-plate inscriptions issued by the kings of the early Bhanja dynasty that reigned over Boudh and Kandhamal in the 8th and 9th Century. Their kingdom was known as Khinjali Mandala. From the 10th Century to the advent of British in this region, Boudh, including Kandhamal, has been governed in succession by the following royal dynasties: the Somavanshis, the Chindak Nagas/Telugu Chodas, the Kalchuris and the Bhanjas. The history of Boudh-Kandhamal for 500 years prior to the coming of the British is however, still nebulous. The Britishers launched a vigorous campaign in these hilly tracts with the objectives of annexing the areas to their empire and suppressing the abominable practice of **human sacrifice**, then prevalent among the Kandhas. The Britishers encountered stiff resistance from the tribals for a prolonged period of 20 years from 1835 to 1855. As the Boudh Raja utterly failed to curb the horrendous ritual of the tribals, the British truncated a large area, where the Kandhas were predominant, from Boudh on February 15, 1855 and named this newly annexed territory as **Kandhamal**. Kandhamal remained a Tahasil from 1855 to 1891 and it was administered by a Tahasildar under the direct control and supervision of the superintendent of the Tributary Mahals of Cuttack. In 1891, it was upgraded to sub-division and tagged with Anugul district. When the new province of Orissa was formed in 1936, and Ganjam was merged with Orissa, from the Madras presidency, Kandhamal became a sub-division of Ganjam. In the wake of the amalgamation of the princely states with Orissa in January 1948, Boudh and Kandhamal constituted the new district of Boudh-Kandhamal, with its headquarters at Phulbani.

III. HISTORY OF LAND REVENUE ADMINISTRATION IN KANDHAMAL

Kandhamal which adjoins the Agency tracts of Ganjam Agency and predominately inhabited by Kondhs was a part of Princely state Boudh till 1855. In the year 1855, the British Government took over the Administration of the tract and appointed Tahasildar under the control of the Superintendent of Tributary Mahals¹. The first survey and settlement operation in Khondmals sub-division were taken up under the British Rule during the year 1921 and completed by 1925. Its stated objective was to "not to assess the Kondhs to land revenue but simply to find out what lands are held by the non Khonds, to consider their title to such land and to assess them if they are maintained in them. So far as the survey extends to the lands held by Kondhs, the objective was to prepare a record which would protect them from the loss of their lands and enable further disputes to be settled. The Survey was taken up initially only in those villages where non- Kondhs owned land

¹ An administrative unit set up by the British in 1814 with its office at Cuttack. The Garajat tributary states were put under the Tributary Mahal. The ruling chiefs of the tributary states recognized the British supremacy, paid them tributes of fixed amount annually and enjoyed internal authority and control over their subjects. They merged into the Orissa province in Jan. 1948.

and prepared records of rights for only the non-Kondhs. Purely Kondh villages were also supposed to be taken up for survey— however this was dropped later. There were 1137 villages in the Subdivision of which 645 were surveyed and the rest 492 villages were left un-surveyed. A total of 37607.63 acres of permanently cultivated land were surveyed, excluding the land under shifting cultivation. In Kondhamals, the system of general administration was enforced through the traditional Headman 'the Mallik' and 'the Sardar' of Mutha (a group of villages). Gradually as the power and influence of the Muttha officials over the tribals increased these presentation in kind lost its voluntary character and came to be regarded as a levy on the villagers. The Mamul system was a feudal system and the object of the system was to keep the Adivasis under check and control through the agency of the non- Adivasi chiefs known as Mutthadars². The main items of collection of Mamuls³ were known as Sanja and Sistu which had some relationship with land. No land revenue was assessed. In the year 1875, payment of plough Tax (calculated on the basis of ploughs) was introduced. This tract was forced as a subdivision and continued to be a part of Angul District. The Angul Law Regulation, 1891 was enforced in this tract and subsequently the Kondhamals Law Regulation 1936 (Regulation IV of 1936) was in force till 3.10.85 being replaced by Govt. in Law department Notification No. 15713 - Lagis. dt. 10.10.85. Balliguda sub-division was formerly a part of the Ganjam district and was in charge of a special Assistant Agent under the control of Collector, Ganjam who was the Agent to the Governor. After formation of the state of Orissa during the year 1936, this tract was under the Ganjam district till formation of the district of Boudh - Khondamal in the year 1948. The land Revenue Administration of this tract was governed by ' Agency Tract Interest and Land Transfer Act (Act I of 1917) under the Madras Presidency.

IV. HISTORY OF SETTLEMENT OPERATIONS

The survey and settlement operation in Khondmals Sub-Division were taken up under the British Rule during the year 1921 in pursuance of Letter No. 199-P Dtd.08.01.1918 of Political Department. The Settlement was started during the year 1921 and completed by 1925. In that settlement **645 villages** of Khondmals were surveyed. In some cases after the limited Survey and settlement Operation of 1918-25, some abadi lands were surveyed and rights were conferred to the non- Adivasi encroachers.

PRESENT SETTLEMENT OPERATION

- Khondmals sub-division: The first regular survey and settlement Operations in Khondmals sub-division were taken up in pursuance of Notification No. 21380/ R dt. 31.3.65 and No.77276 / R dt. 3.12.65. Survey and Settlement Operations in 892 villages of this sub-division have been completed by 1982.
- Balliguda sub-division: The first regular survey and settlement Operations in the Balliguda sub-division were taken up in pursuance of Notification No. 32475/R dt. 1.7.68 and No.74421/R dt. 21.22.64. Survey and Settlement Operation in 1611 villages of this sub-division have been completed since 1982.

BALIGUDA FOREST DIVISION:

The total number of Reserve Forests notified under Balliguda Forest Division up to February 1999 is 55 covering with an area of 1031 sq. km. The process of Reservation forests in Balliguda subdivision was carried out within two types of laws: (1) **Madras Forest Act 1882** & (2) **Orissa Forest Act 1972**. Out of this 24 Reserve Forest Blocks consisting of the total area of 391.84 sq. km. were declared Reserve Forests under Madras Forest Act, beginning from 1955 till 1972. In 1972, the Orissa Forest Act, 1972 became applicable to the area. On the basis of OFA, thirty-one blocks in Balliguda Forest Division consisting of the area of 639.97 sq. km were notified as Reserve Forests. Almost 90% of the Reserved Forests in the Balliguda Forest Division were reserved in the period 1965-1985, and more than half the Reserved Forests were declared before 1975.

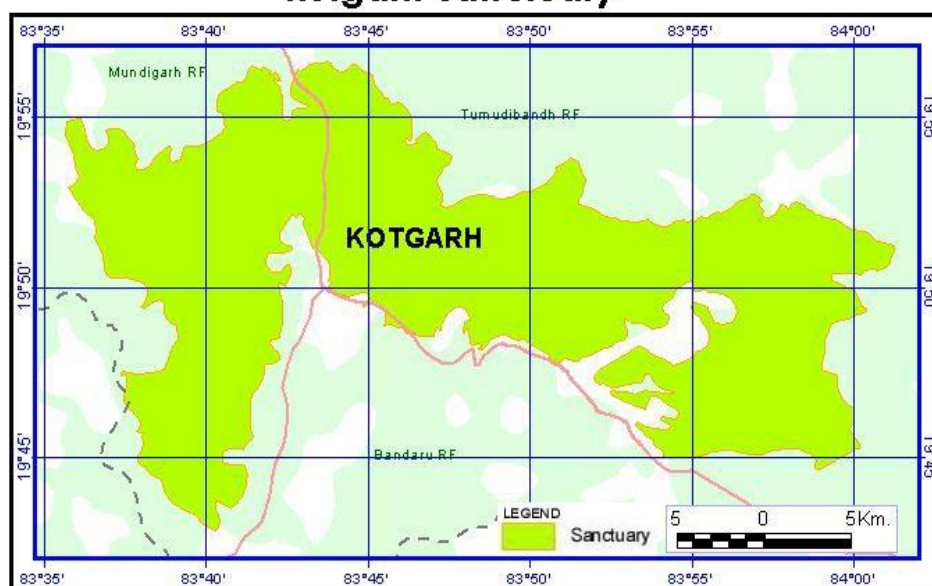
V. KOTGARH WILD LIFE SANCTUARY

Kotgarh Wild Life Sanctuary with an extensive area of 399.50 Sq Km well spread over the jurisdiction of Kotgarh and Tumudibandh ranges of Baliguda forest Division under Kotgarh, Tumdibandh and Daringbadi C.D Blocks of Baliguda Civil Sub Division in Phulbani district. The sanctuary comprises 26,950.96 hct of forest area and 12,999.040 hct of revenue land. This sanctuary consists of 5 RF, 3PRF and 2 DPF. Originally 65 revenue villages were there inside the sanctuary. After some reorganization of the areas it came down to 52. But regarding the exact number of forest villages (Patches), ambiguity still prevails.

² Mutthadars (Usually non-tribals) were looking after the day to day affairs of a couple of villages under him and was responsible for the maintenance of law and order but gradually they became more powerful and collected different items in different occasions like ceremonies and pujas etc.

³ Mamul was the arbitrary and forced collection of different items like paddy, chickens etc in the guise of gifts from the tribals.

Kotgarh Sanctuary



Source- www.wildlifeorissa.in

Details Break-up of Kotgarh Wild Life sanctuary

Sl. No	Reserve Forest (RF)	Area in Ha	Proposed Reserve Forest (PRF)	Area in Ha	Deemed reserve forest (DPF)	Area in Ha	Total in Ha
1	Madaguda	3601.60	Kilangi	607.28	Srirampur	4585.442	-
2	Haripur	4266.00	Subarnagiri	3004..208	Guma (North)	1064.420	-
3	Lassery	7296.00	Guma (South)	1404..210	-	-	-
4	Bondru	367.00	-	-	-	-	-
5	Supamaha	754.80	-	-	-	-	-
-	-	16285.40	-	5015.698	-	5649.862	26,950.960

Source- Management Plan of Kotgarh Sanctuary

The identity of the tribals in many ways related mostly with land and forest. But unfortunately in the above process, their very identity is in great threat. This is because of the facts that, in the above process different new problem have cropped up. Government has even banned shifting cultivation and seasonal collection of minor forest produce since 1996, the two major sources of income of the tribals. The tribals are allegedly responsible for destruction of forests. As regular survey and settlement operations has not been made in Kandhamal, the rights of the tribals over such lands like Misrit Jungle, salua jungle and patria jungle were not transferred to the tribals even if they have been cultivating since long. As a consequence a large tract of land ceded away from the tribals making them more vulnerable to different situations. A secondary source data collected from a recent survey by a local voluntary organization shows that, out of a sample of 13 villages across three GPs of Marlang, Sirkabarga and Sonapur the tribals are being deprived of 113 acre of land (Plain land apart from Podu area) in this process.

The decreasing access over land and forest in this area has changed the very structure of the tribal society. Migration is on the increase in these areas owing to the effects on livelihood. Data from 6 villages from Madaguda Panchayat shows that around 56 people have migrated to several places in search of their livelihood. Data for the last four years in Madaguda Panchayat suggests that the trend is increasing every year. In order to have a clear picture of the extent of land alienation in two distinct parts of Kotgarh Sanctuary an informal survey was undertaken whereby villages of two separate panchayats such as Guma and Sirkabarga was taken as unit of analysis. Six revenue villages of Sirkabarga G.P namely Ukding, Meramaha, Manikjodi, Tukubari, Banjamaha, Katedmaha and four villages of Gumma G.P namely Gumma, Saperi, Gambharigaon and Dupi were taken for the anlysis of land alienation. From village level survey, it has been ascertained that around 134 acres of agricultural plain land has been slipped away from the people. In some cases even the people have retained some proof to it. But unfortunately in majority of the cases they don' t have any such documents with them. At the same time people from Sirkabarga and Ukding of Sirkabarga GP have retained some of the receipts of the encroachment cases thereon.

Under the UN scheme for the protected areas, the forests, the animals, the birds, the agriculture and the human being ought to have been protected for their uniqueness. Eviction threats have been routine since 1981, when the state government planned this sanctuary in Kandhmal. Between 1982 and 1985, the Kandhmal district administration served notices to settle land disputes of tribal communities living in forest areas. The people were asked to convey their claims and objections before the district administration. Tribal communities, illiterate and ill-informed as they are, did not respond. Political pressure ensured that the administration did not pursue the matter. The tribal community had become apprehensive about getting displaced from their ancestral land. The forest officials started cashing in on this fear. The immediate impact was corruption. Bribes —from chicken to cultivated forest products to hard-earned money — became the norm and ensured that status quo was maintained. The forest department and revenue department came up with no steps to address the tribals' grievances. But the government agencies continued to violate this norm for lucrative business interests. The natural forests were extensively logged and substituted with plantations of teak and eucalyptus. Nearly 15 per cent of the area within the sanctuary is now under plantations.

Governments have been systematically pushing out the Adivasis to the forest fringes. In more than 20 hamlets within the sanctuary, Adivasi lands were taken over for teak and eucalyptus plantations. Severe restrictions were placed on indigenous people who continued to live within the forests. They were seen and labeled as encroachers. No livestock or dogs are allowed. No wells could be dug. The houses could not be renovated. A total ban on collection of minor forest products such as tubers, mushrooms and wild vegetables has been imposed. Adivasis are not allowed entry to the sacred sites and burial grounds within the forests. The government even sought to put a ban on traditional music and dance forms. The Adivasis are being constantly harassed. Many were put behind bars on fake charges of forest offences. The govt machinery have slowly, gradually and very cautiously withdrawn from all welfare activities like the PDS, health and education related services inside the sanctuary area. It is ironical that even before the final notification of Sanctuary the fundamental human rights of the tribals are being violated each moment. Without any legal validity of the so called sanctuary as of today, the cosmic and legal rights of the tribals over their resources are being violated non other than the state itself. A tribal women from inside a forest village said ***“ we have lost our lands and presently we are being confronted with inflation and financial insecurity. The forest department prevents us from keeping domestic animals like sheep and goats, and prevents us from extending our houses. They destroy our kitchen gardens, and prevent us from collecting firewood. If we do collect some, they confiscate it and demand fine from us .*** A lot of respondents talked of financial insecurity and inflation as major problems that they face now. They are finding it increasingly difficult to collect products from the woods and sell them outside and so they are forced to ' buy' everything from the market. Without assured monetary income, they find it very difficult to survive.

VI. FOREST VILLAGES

Apart from the revenue villages in Kotgarh sanctuary, ambiguity prevails over the existence of the exact number of forest villages. In fact, there are few more habitations inside the sanctuary area without any claims in the revenue records of rights otherwise are being termed as encroachers. Over the existence of these settlements, there exist different views within the two dept, revenue and forest dept. In 1995 verification was undertaken by revenue dept according to which against 23 unsurveyed hamlets (Termed as encroached) located inside reserve forest, cases of revenue offenses have been recorded much before the commencement of Forest Conservation Act-1980. The revenue dept though wanted to confer these 23 hamlets the status of revenue village but since the same were within the limits of the sanctuary the forest dept didn' t agree with the proposal of revenue dept and called for a joint verification which was carried out on 16th May1995. According to the forest dept, only those hamlets will be given the status of revenue village against which there are evidences of revenue as well as forest offences before 1980. From the joint verification five habitations namely Bandeka, Bandepipili, Jakeshi, Srambi, and Bindupadar were identified for conversion into revenue villages. Initially out of these five Bindupadar was found to be outside the sanctuary area. These four villages consist of 113 families with a population of around 342. Again the differences cropped up between the two depts. According to the revenue dept the area including homestead and agricultural land was 1050 acres while the forest dept said the area was only 330 acres. The differences seem to be continuing till date. Only two hamlets namely Srambi and Jakeshi have been regularized but at the same time the final disposal of rights has not taken place as yet.

There is a breach of social obligation by three claimants in this situation. First the earlier land owners (In this case it happens to be the State Revenue department as all barren common lands are owned by the state); second the new land owners, in this case the State forest department that became the new owner of the land after it was declared PA; and third, the elected representatives to their constituencies, in the local, democratically elected government. There is a breach of trust by the government revenue officials who took away the land titles from these families without adequately providing for their survival. The forest department has not respected the customary rights of the tribal communities. The identity and survival of the community are inextricably linked

with these customary rights. The economic loss due to the loss of traditional rights of the local communities is ignored. The concern expressed by the groups of people, about the depletion of water, degradation of land and other changes in ecosystems affecting the traditional patterns of natural resource exploitation do exist and dominant in the local discourse of the affected people within the sanctuary. In the case of Kotgarh the state appears as a monolith. The forest department was quick to term the tribals as encroachers and have employed their punitive powers of confiscation and arrest etc.

VII. SETTLEMENT OF VILLAGER' S RIGHT

One of the major concerns is with regard to uncertainties with which people are residing within the sanctuary area. According to the district authorities only the revenue villages will be allowed to continue inside the sanctuary. This raises question as to what will happen to the people of 23 hamlets situated within the limits of sanctuary which have not been accorded the status of revenue village. On the other hand villages threatened by the fear of eviction are continuing to receive developmental extension facilities. In some of the Panchyets inside the sanctuary huge support has been given for infrastructure facilities like school, anganbadi, rest house etc to the villages which have not been recorded as revenue villages. Up till now a couple of forest villages have been traced in GPs like Sirkabarga, Sonepur. Habitations with a moderate size of population do exist in villages such as Srakipanga, Bandamera, Gasapanga, Buduki, Mlahaguda, Gudrimaha, Pitkomera and Medumaha. Plantations have become the preferred tactics of the Forest Department leading to continuous conflicts with tribals. For example, in last five years, Forest Department has taken up **an incredible 287 ha of plantations**. Tribals take much of this plantation up on land already being cultivated or under shifting cultivation. The lack of legal title of tribals on most of the land cultivated by them aggravates this situation.

The above process has violated many laws, apart from its ethical and social justice implications. The most important violation is that of the Schedule V of the constitution which enjoins the State to protect the Scheduled tribe' s rights in land. The **section 3(iii) of the Orissa Schedule Area Transfer of immovable Property Regulations, 1956(OSATIP)** is also violated by turning scheduled tribes "effectively" landless. This section provides a minimum benchmark of 2 acres of irrigated or five acres of unirrigated land for ownership by scheduled tribes before any land in their possession can be transferred. By not recognizing their cultivation rights and by evicting scheduled tribe persons from the land possessed and cultivated by them for generations, this provision is violated. Both as per the principle of adverse possession in Orissa Land Reforms Act, 1960 and as per the **section 7(a) of Orissa Prevention of Land Encroachment Act, 1972 (OPLE)**, such land should have been settled with the landless persons to the extent of one standard acre (equivalent to 4.5 acres of uplands).

Tribal Kondhs customary rights over natural resources such as forests, cultural identity, traditional knowledge cultural heritage and traditional wisdom have been continuously put at stake since last twenty years due to the current developmental paradigm of globalization, liberalization and privatization. Forced eviction and land alienation – the two critical facets of tribal rights violations have attracted wide attention of civil right organizations and intelligentsia. The recent onslaught of communal violence has also raised critical questions on the Indigenous governance, administrative and justice delivery systems of the state. The tribal folks have an equal stake in the development discourse and the state must ensure that their human right is well protected along with the state conservation initiatives. What was taken away from the local communities was their access to common property resources, such as fuel wood, grass and small timber and access to their own lands. What the state was able to extract was exclusive economic profit from their declaration of sanctuary. What was left for the local communities after the various claimants made their claims is of interest here. The local communities lost everything. They lost their lands and their customary rights and now they are threatened with the loss of their status as tribals, as they are clubbed with encroachers and would have to fight their battles as such, with the rest of the encroaching groups.

VIII. CONCLUSION

It can be drawn that a section of establishment believes that only by strengthening the colonial practice of forest governance, and continuing with a discredited system of guards and guns, can conservation of natural resources of this country be ensured. But all instances of successful conservation point to the need for democratic community involvement. Conservation of nature is primarily in the interest of the tribal people and forest dwellers. Let us find new solutions in the firm belief that a nation committed to democratic values, as enshrined in its constitution, calls for a new frame of forest governance rooted in rights and leadership of the citizen community, with responsibility and authority for conservation and a fundamental departure from colonial practices of appropriation, policing and alienation of forest dwelling communities. Denying Adivasis, who have preserved the forest for generations, their forest rights has reduced them to India' s poorest, marginalized communities, condemned to starvation, malnutrition and death. There is a growing believe that integrating conservation of nature with livelihood and food security is the only effective alternative before the nation.

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