

## **Continuing Historic Injustice to Adivasis in Kerala: The Failed State and Beyond Subjugation and Resistance**

C.R Bijoy

### ***Abstract***

The Adivasi question in Kerala moved to the centre stage of politics in the mid-nineties to reach a watershed in the early twenties. The trajectory of their contemporary struggles for survival began with the need to decolonize the Adivasi areas as part of the need to establish the writ of the state over the territory that it was charged with. Large parts of Adivasi homelands were taken over as State forest, a process that began with the British. The process of dismantling feudal holdings that got enunciated in late 1950s taking off substantially in the early 1970s failed to either address the Adivasi specificity or even consider it. Instead, the situation got exacerbated. The 1975 Act enacted with much zeal, but coming as it did at the trough in the wave of political exuberance in redistributive justice, failed to take off lacking the political will and push from the mainstream society or working class.

What is also striking is that the state from being obliged to uphold the law that it passed, became a silent abettor of the violations of the 1975 Act. However, the tide began turning in the early nineties with the beginnings of stirrings from within the Adivasis and outside of the established political establishments. Adivasi land issue steadily crept towards the centre stage of state politics. From being a silent abettor to the subversion of the 1975 Act, the governments and the state transformed itself into an activist to dismantle the law itself despite constitutional hurdles. But the government by then showed itself clearly as the main organized instrument in opposing the rising aspirations of the Adivasis.

The nineties was also significant for the Adivasis of mainland mid-Indian region classified as Scheduled Area where the Adivasi movements, having realized that establishing rights is not possible without the establishment of a countervailing power in governance of Adivasi territories vis-à-vis the powers of the central and state governments, succeeded in establishing constitutional legitimacy in what has come to be popularly called Self-Rule law in 1996, an extension of the constitution. The context was provided with the miserable failure of the state sponsored welfare and development through the flagship Tribal Sub Plan approach, in the absence of a reversal of internal colonization of Adivasi terrains and establishment of a governance system that best suited the region as constitutionally mandated. This was further exacerbated by the predatory intrusion and invasion of the resource-rich Adivasi regions that has now reached a new intensity with globalization riding on liberalization, exploding and spreading widespread conflict, with the Adivasis pitted against the state and the government. With the acceptance of governance failure in the Adivasi regions, the failed state has been forced to appease the ferment grudgingly through the enactment of the self-rule law in 1996 while at the same time unleashing intensified relentless attacks on the resources in Adivasi areas.

The central and state governments across the country launched an unprecedented drive to evict the Adivasis from the forest areas beginning in 2002 against which a nationwide mobilization of Adivasis stood up forcefully resulting in the enactment of the

Forest Rights Act in 2006 to rectify the ‘historical injustice’ meted out by not recognizing and settling their rights in the forest despite laws. The Forest Rights Act sets in motion the carving out of territories for actually manifesting self-rule in practical terms.

The paper outlines the contours of this process briefly while dwelling into the provisions of the new governance structures in these central legislations. In the state of Kerala, the promised declaration of Adivasi areas under the V Schedule of the constitution in 2001 that was attempted to be forced through the symbolic peaceful struggle at Muthanga was brutally crushed indicating once again the remarkable unrelenting antagonism towards further democratization of society. At the same time, the Plachimada struggle threw up once again state complicity in contaminating a survival resource – ground water - and in its inability and failure to contain run away destruction of this life sustaining resource. The state caught up in a vortex of neo-liberal regime succumbs to the take over of the commons from communities. What is striking in this case is the remarkable resilience of the Adivasis to raise the issue demanding community right over ground water and its governance.

Despite the shortcomings of the relatively laudable Kerala model of development, decentralization of governance structure and the experiment with people’s planning, the paper argues that the way forward now is to recognize that the Adivasi struggles in Kerala and across the country are indicative of the contradictions and related conflicts that are bound to emerge in mainstream society soon with intensification of the neo-liberal regime. Notice here that the land question raised in 2001 by the Adivasis has broadened out quietly into a popular land occupation movement across the state by landless of all sections of society.

The paper argues that the emerging governance laws in the last decades for the Adivasi regions won through hard struggles also indicate ways for further democratization of the state and society in general through the establishment of a non-centralised system of participatory governance at its fundamental administrative unit forming actually the edifice for local self governance that can potentially offer the space for equity and justice to play out in the context of withdrawal of the state in favor of market and capital.

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Beginning with the mid-nineties, the Adivasi question in Kerala reached a watershed in the early twenties with the ‘agreement’<sup>1</sup> between the United Democratic Front government and the Adivasi Dalit Samara Samithi (ADSS) on 16 October 2001. This ‘agreement’ categorically agrees, amongst others, to distribute land to the landless Adivasi families<sup>2</sup> by 31 December 2002 and to include Adivasi areas in the Schedule V to enable the Adivasis to enjoy the extended provisions to the Constitution namely the Panchayat Raj (Extension to the Scheduled Areas) Act 1996 that provides for elements of self-governance.

Muthanga reoccupation followed when over a thousand Adivasis moved in on 4 January 2003 after the deadline prescribed by the government for land distribution expired on 31 December 2002. Then followed the brutal state repression and vicious crack down beginning on 19 February 2003. The image of the heroic government saving the state from a vicious nefarious terror plot by the emaciated Adivasis was manufactured shamelessly. The Adivasis resorting to such desperate measure, despite the fact that the Adivasi question had reached a formal political resolution, confirms the continued failure of Kerala State to deliver. But does this state have the capacity to deliver?

Kerala, one of the most relatively backward states in the country, with a per capita domestic production well below the national average, ranks the highest in the country in terms of provision of basic needs. Its PQLI (The Physical Quality of Living Index) score comparable only to the highly developed countries, challenges the conventional wisdom that high levels of social development cannot be achieved in the absence of high rates of economic growth. This is evidence enough of the success of the state along with its political democracy to ensure distributive justice.

### **Kerala: The Failed State**

But then what happened to the governments and the state when it came to its Scheduled Tribe population? It obviously is not a state that failed to deliver, but actually a *failed state*. Consider the following facts.

### **Subversion of Constitution of India**

Article 244 under ‘Part X: The Scheduled and Tribal Areas’ provides for administration of Scheduled Areas and Tribal Areas through the provisions of the Fifth Schedule and the Sixth Schedule. The provisions of the Fifth Schedule apply to the administration and control of the Scheduled Areas and *Scheduled Tribes* in any State

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<sup>1</sup> (1) Five acres of land to all Adivasi families having less than one acre of land. To begin with, 42,000 acres of land of between 1-5 acres would be distributed and the work would begin from January 1 to December 31, 2002.

(2) A master plan would be made before December 2001, to be included in the 10th five-year plan beginning from 2002.

(3) A cabinet decision to include Adivasi areas in the V schedule and a proposal would be made which shall be sent to the centre for further notification by the president.

(4) The Supreme Court judgment related to the case pending on the 1975 Act would be abided by the Kerala government.

(5) A tribal mission would be constituted to carry out all the above headed by a senior IAS officer.

<sup>2</sup> The Tribal Mission identified a total of 53, 472 families as beneficiaries of land allotments and 59,452 acres of land were identified to be handed over to the Adivasis as on 1 January, 2002. Of this about 22,000 families were landless and the remaining had less than 1 acre of land.

other than the States of Assam, Meghalaya, Tripura and Mizoram. These provisions are therefore applicable to the Scheduled Tribes of Kerala making it mandatory for the state to ensure [Para 5(2) of Schedule V] total prohibition of transfer of immovable property to any person other than to a tribe, for peace and proven good management of a tribal area and to protect possession, right, title and interests of the STs.

### ***Land Rights***<sup>3</sup>

In 1961, the Dhebar Commission, the Scheduled Areas and Schedule Tribes Commission appointed under Article 339 of the Constitution headed by U N Debar, recommended that all tribal land alienated since January 26, 1950 – the day the Constitution came into force – be restored to the original Adivasi owners. But the Kerala government took another decade and a half to enact the Kerala Scheduled Tribes Act (Restriction on Transfer of Lands and Restoration of Alienated Lands) in 1975, a quarter century after the Constitution came into force,<sup>4</sup> and that too restoration of land alienated since 1960 and not 1950. But rules were framed still a decade later in 1986. This 1975 Act was in fulfillment of the explicit requirement of Fifth Schedule of Article 244 to provide suitable legislation to restore alienated tribal lands and to prohibit transfer of tribal lands to non-tribals.

Despite the explicit orders of the Kerala High Court in 1993, most of the alienated lands were not restored<sup>5</sup>. Instead the government replaced the 1975 Act with ‘The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999<sup>6</sup> which in effect denies restoration of alienated lands. Kerala High Court struck down this part of the law as unconstitutional and declared the government to be in contempt of the Court which the government challenged in the Supreme Court.<sup>7</sup> Despite the knowledge

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<sup>3</sup> For a detailed examination of the issue, refer Bijoy, C R, *Adivasis Betrayed: Adivasi Land Rights in Kerala*, Economic and Political Weekly, May 29-June 4, 1999, pp 1329-35 <http://www.epw.in/uploads/articles/9802.pdf>, and Bijoy, C.R and K. Raviraman. *Muthanga: The Real Story. Adivasi Movement to Recover Land*, Economic and Political Weekly May 17, 2003, pp.1975-82. <http://www.epw.in/uploads/articles/2819.pdf>.

<sup>4</sup> Earlier in 1972, the Kerala Private Forest (Vesting and Assignment) Act was passed which specified nearly 23,000 hectares to be distributed to the landless Adivasis which too remain unfulfilled.

<sup>5</sup> As on April 4, 1991, the total number of applications for land restoration was 8,754 laying claim to a total of 9,909.4522 hectares. The number has since risen to 8,879. 463 applications were disposed and an area of 544.5602 hectares restored leaving 8,291 applications for 9364.8920 hectares. Of these, over 3,000 applications were rejected for want of adequate “documented or recorded” proof of ownership of land by Adivasis leaving just 7,640 acres to be claimed by 4,524 applicants.

<sup>6</sup> Passed by the Kerala assembly as Bill No 163 on February 23, 1999

<sup>7</sup> These acts of the Kerala government goes counter to the Section 3(1) IV and V of the SC and ST (Prevention of Atrocities) Act, 1989 which prescribes punishment between six months and five years imprisonment to those who wrongfully occupy or cultivate any land owned by or allotted to or notified by the government to be allotted to a member of ST or gets the land allotted to him transferred and wrongfully dispossesses a member of ST from his land. The act also provides for punishment of officials for neglect of duties prescribed under this act. These acts also violate Articles 3, 13 and 14 of ILO Convention 107 (ratified by India) that relate to protection of properties, respect of customary procedures of transmission of traditional ownership of lands, prevention of non-tribes from securing ownership or use of lands belonging to tribals and provision of more land when they have not the area necessary for providing the essentials of normal existence. They also violate Section II of the ILO Convention 169 on Indigenous and Tribal Populations (which India is yet to ratify), which explicitly recognizes the concept of territoriality of the tribals and the relationship it has with their identity, and their right to ownership and possession over lands traditionally occupied. These violates Article 8(2)(b), 10, 25, 26, 27, 28, 29(1), and 32 of the United

that the very provision of not restoring alienated lands in the 1999 Act being unconstitutional, the government and the political parties are determined not to honorably withdraw the challenge in the Supreme Court, but instead insist on ensuring that the non-Adivasi land grabbers retain the 'recorded' lands of Adivasis. These lands itself forms only a miniscule portion of their actual traditional land holdings that the government failed to record which legally it should have. Instead, the grand proposition of the government is to provide alternate land up to 2 ha in lieu of alienated lands and 1 acre to the landless. It was not as though that the 1975 Act itself was just. The law insisted unjustly that the Adivasi pay compensation to the land grabber for improvement made on the land instead of the other way around of the land grabber paying compensation to the original land holder for the years that the land was denied to the original owner.

The 1975 Act, an obligation under Article 244 of the Constitution, was itself inserted in the 9<sup>th</sup> Schedule to prevent it being challenged in any court of law. But notice how the governments, whether the United Democratic Front and the Left Democratic Front alike took elaborate efforts to bury the 1975 Act. First the government tried to amend the 1975 Act with an ordinance in early 1996 which failed to get past the Governor, and later enacted 'The Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Amendment Act, 1996' on 23 September 1996 when yet another ordinance failed to get past the Governor. This fast-track move was to beat the deadline of 30 September 1996 set by the High Court to restore alienated lands. When the President of India returned it withholding his assent, the government diabolically enacted the 1999 Act under 'agriculture', a state subject, and repealed the 1975 Act, in effect to avoid even any legal obligation to restore illegally alienated lands of Adivasis.

In total contrast was the zest and speed with which the government, the political executive and the state machinery went ahead to appropriate lands from landlords with Kerala Agrarian Relations Act in 1959 that got aborted, followed by the Kerala Land Reforms Act 1963 and its 1969 reforms settling over 2.4 million tenanted plots as the property of their former tenants<sup>8</sup> by 1980, within a decade.

The 'agreement' between the United Democratic Front government and the ADSS of 16 October 2001 also contained the proviso that 5 acres of land would be given to all Adivasi families having less than one acre of land before 31 December 2002. The government reported to the National Human Rights Commission in April 2002 that 568 families had been provided 1,308 acres of land since January 1, 2002<sup>9</sup> and another 434 families during the period since April 2002 to February 2003, i.e. less than 2 per cent of the families received land within the stipulated period.

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Nations Declaration on the Rights of Indigenous Peoples adopted by General Assembly as Resolution 61/295 on 13 September 2007. India was one of the 143 countries that voted to adopt this Declaration.

<sup>8</sup> Herring, Ronald J. *Abolition of Landlordism in Kerala: A Redistribution of Privilege*, Economic and Political Weekly, Vol. 15, No. 26 (Jun. 28, 1980), pp. A59-69.

<sup>9</sup> *Report of Government of Kerala on the Petition dated 18.9.02 submitted by the All India Coordinating Forum of Adivasis/Indigenous Peoples before Honourable Justice Verma, National Human Rights Commission*, pp 5-6.

## ***Forest Rights***

‘The total tribal families living within the forest areas of the state is about 21,500 comprised 1,744 settlements<sup>10</sup>, whose rights have not been settled despite relevant orders from the Ministry of Environment & Forests, New Delhi in 1990<sup>11</sup> nor under the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (in short ‘Forest Rights Act 2006’) which, in addition, confers rights also to people residing outside forest lands but dependent traditionally on forests. The government identified only 404 villages for recognition of forest rights of which only 281 villages have constituted Forest Rights Committees as on 28 February 2009<sup>12</sup> declaring that title deeds will be distributed in March 2009 when already 1,36,699 title deeds have been distributed in all other states put together with another 1,71,933 ready for distribution, notwithstanding the declaration of the Kerala government that Kerala will lead amongst states in settling the rights. But this same government could hurriedly, within a mere month and a half,<sup>13</sup> notify 881 sq kms (733 sq kms in Periyar Wildlife Sanctuary including 350 sq kms of Periyar National Park, and 148 sq kms of Ranni Forest Division) of the Periyar Tiger Reserve in Idukki and Pathanamthitta districts, and 235 sq kms of the 285 sq kms Parambikulam Wild Life Sanctuary in Palakkad district<sup>14</sup> in total violation of Wild Life Protection Act Amendment of 2006<sup>15</sup> and the Forest Rights

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<sup>10</sup> Extracted from the *Speech by A.K Balan, Minister for Scheduled Castes, Scheduled Tribes and Backward Classes at the Tribal Ministers Conference*, Ministry of Tribal Affairs, New Delhi, 27 June, 2008.

<sup>11</sup> Vide Circulars No. 13-1/90/-FP (1) on *Encroachment on Forest Land - a Review Thereof And Measures for Containment*;

No. 13-1/90-FP (2) on *Review of Disputed Claims over Forest Land arising out of Forest Settlement* and No. 13-1/90/-FP (5) on *Conversion of Forest Villages into Revenue Villages and Settlement of Other Old Habitations* Dated the 18 Sept. 1990

No. 13-1/90-FP (2)Sub:- *Review of Disputed Claims over Forest Land arising out of Forest Settlement*

No. 13-1/90/-FP (5)Sub: *Conversion of Forest Villages into Revenue Villages and Settlement of Other Old Habitations*.

<sup>12</sup> *Status Report of Implementation*, Ministry of Tribal Affairs, Government of India

<http://tribal.nic.in/index1.html>

<sup>13</sup> Circular from Dr.Rajesh Gopal, Member Secretary, National Tiger Conservation Authority, Ministry of Environment & Forests, Government of India, on *Identification and notification of core or critical habitats in Tiger Reserves*, No.1501/11/2007-PT(Part) dated 16 November 2007.

<sup>14</sup> G.O. (P) No. 75/07/F&WLD dated 31 December 2007 notified in the Kerala Government Gazette No.2328 of Vol.52 Dated 31 December 2007.

<sup>15</sup> Violating (a) the Wild Life (Protection) Act as amended in 2006 that came into force with effect from the 4 of September, 2006, (b) *Guidelines to notify critical wildlife habitat including constitution and functions of Expert Committee, scientific information required and resettlement and matters incidental thereto* dated 30.10.2007, (c) the *Revised Guidelines for the Ongoing Centrally Sponsored Scheme of Project Tiger* F. No. 3-1/2003-PT of February 2008 and (d) *Format for Preparation of Village Relocation Plan from Core /Critical Tiger Habitats* F. No. 3-1/2003-PT (relocation) of February, 2008 of National Tiger Conservation Authority, Ministry of Environment & Forests as specified *hereunder*:

- i) By not providing the details of the Tiger Conservation Plan for Critical Tiger Habitat proposed and approved by Tiger Conservation Foundation/state government and/or the National Tiger Conservation Authority to the concerned Gram Sabhas;
- ii) By not having obtained the consent of Scheduled Tribes and other forest dwellers in the area to the proposition that the area must be inviolate, as is required under section 38V(5)(ii) of the Wild Life (Protection) Act, 2006;
- iii) By not having obtained Resolutions from the gram sabhas concerned that recognition and vesting of rights in the affected area is complete (paragraph 4(vi) of Ministry of Environment and Forests' ‘Guidelines to notify critical wildlife habitat including constitution and functions of Expert

Act 2006. Further the government submitted a proposal to the Ministry of Environment & Forests for ‘voluntary relocation’ of 983 families (593 tribal and 390 non-tribal families) in Wayanad Wildlife Sanctuary at a cost of Rs.85 crores<sup>16</sup> without the legally mandatory settlement of rights under Forest Rights Act 2006. All these in spite of the legal provision under Section 7 of the Act<sup>17</sup> which makes any violations by officials of any clauses under Forest Rights Act an offence.

### ***Development Rights***

As early as 1975 the government established the tribal welfare department. It identified five tribal areas of Wayanad, Nilambur, Attapady, Idukki and Punalur for the implementation of Integrated Tribal Development Programmes bringing about 75 per cent of the total tribal population of the state under the purview of the Integrated Tribal Development Programme (ITDP). The Kerala Panchayat Raj Act of 1994 and its operationalisation in 1995 followed by the ‘people’s plan campaign’ in 1997, transfer of two-thirds of the funds handled by the SC/ST department to the three-tier local bodies, resumption of Tribal Sub-Plan Funds back to ST Development Department<sup>18</sup> due to defective utilization by the Panchayat Raj structure and substitution with the ‘Tribal Promoter - Oorukoottam’ structure in 2001<sup>19</sup> and so on followed.

‘Historically, tribal development has ignored empowerment approach and concentrated on dependence inducing top down provision of development inputs’.<sup>20</sup> The development delivery through the hegemonic command and control state machinery assessed by the State Planning Board concluded that ‘even after five decades of development efforts, STs continue to constitute relatively the most backward and

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Committee, scientific information required and resettlement and matters incidental thereto”, dated 30.10.2007 and also concerning critical tiger habitats);

- iv) By not holding public hearings by the Expert Committee as required under paragraph 5 of the above guidelines.
- v) By not having made known of the resettlement or alternative package (as per Format for Preparation of Village Relocation Plan from Core /Critical Tiger Habitats vide F. No. 3-1/2003-PT (relocation) of February, 2008 of National Tiger Conservation Authority, Ministry of Environment & Forests) including the facilities and land allocation at the resettlement location, for providing for livelihood for the affected individuals and communities fulfilling the requirements given in the National Relief and Rehabilitation Policy and the head wise budget allocation, the time line for the completion of the resettlement or alternative package, and details of the funds sanctioned for such plans;
- vi) By not having obtained the informed consent of the Gram Sabhas concerned, and of the persons affected, to the resettlement programme as required under 38V(5) (iv), (v) and (vi);

<sup>16</sup> *Voluntary Relocation of Human Settlements in Wayanad wildlife Sanctuary*, Press Information Bureau, 25 February 2009, <http://pib.nic.in/release/release.asp?relid=47924> (accessed on 27 March 2009)

<sup>17</sup> Sec.7. Where any authority or Committee or officers or member of such authority or Committee contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

<sup>18</sup> G.O. (P). No.430/01/SCSTDD dated 20.9.2001

<sup>19</sup> G.O (MS) No. 40/20001/Plg. dated 08.10.2001. This order was issued when Adivasi-Dalit Samara Samithy demanded the inclusion of Adivasi hamlets as Scheduled Area under the V Schedule under Article 244.

<sup>20</sup> *Report of the Working Group Constituted by Kerala Government as per G.O.(RT) No. 2007/08/scstdd, dated 25-2-2008 on Implementation of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*

vulnerable sections of the population in the state with extremely weak economic base'.<sup>21</sup> Otherwise why should over half the tribal population wallow below poverty line with the highest in the Tribal Sub-Plan areas?<sup>22</sup> The acclaimed decentralized planning process with the Panchayat Raj structure compounded with People's Plan, instead of introducing democratic local self governance, perpetuated the hegemonic process of internal colonization of Adivasis, their territories and livelihood resources in collusion with state structures and the use of tribal development inputs. The Planning and Economic Affairs department<sup>23</sup> made a quick analysis of the tribal situation in the State which revealed the following features.

- (i) Extreme levels of poverty, deprivation and vulnerability.
- (ii) High levels of exclusion, both developmental and social.
- (iii) Extremely low levels of empowerment – political, social and economic.
- (iv) Rapid marginalization due to unfair, unequal and exploitative relations of production and exchange between tribal communities and others.
- (v) Low level of access to entitlements
- (vi) Practically zero participation in development matters with no autonomy in any form of decision making.
- (vii) Abnormally huge siphoning off of developmental resources and benefits meant for tribal people by middlemen.
- (viii) Poor human development with low levels of literacy and access to health care.
- (ix) Rapid alienation of assets like land.
- (x) Alarming depletion of social capital, especially traditional forms of organization and leadership.
- (xi) Quick deterioration of traditional knowledge systems and cultural attainments.
- (xii) Fast increasing tendency to use tribal people as cat's-paws in criminal activities like illicit distillation, cultivation of narcotic plants, stealing of forest wealth etc.
- (xiii) High levels of exploitation of women by outsiders.
- (xiv) Weak delivery system of public services.
- (xv) Dependency-inducing developmental programmes relying on distribution of benefits rather than building up of capabilities.
- (xvi) Implementation of ad-hoc and stereotyped developmental programmes in the absence of proper planning.
- (xvii) Very weak monitoring systems.

The welfare and development inputs centered state-driven *Oorukoottams* envisaged as an innovation in the above situation remain but yet another instrument to improve delivery within the realm of welfare and development inputs on lines of the same failed track. Further, distribution of land and delivery of development inputs to the Adivasis in their habitats by the state that is a 'failed state' simply cannot continue to be the answer. Rights to land, forest, resources, and development can be enjoyed only when

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<sup>21</sup> Government of Kerala, *Economic Review - 1999*, State Planning Board, Thiruvananthapuram.

<sup>22</sup> Government of Kerala, *Tribal Sub-Plan 1999-2000* (For instance 60.39% in Wayanad, 55.77% in Idukki and 53.09% in Palakkad districts are below the poverty line among STs. These districts also have the largest ST concentration amongst districts in the State)

<sup>23</sup> *Guidelines for Preparation of Tribal Sub Plan by Local Governments*, Appendix to G.O. (MS) No. 54/2003/Plg. Dated 31st May, 2003. <http://www.keralaplanningboard.org/html/Reports/Guidelines%20-%20TSP.pdf> accessed on 28 March 2009.

the Adivasis, in the complete absence of being protected, have power manifested through governance, precisely something the state stoutly resists. The 'failed state' is characterized not only by being an active violator of rights and abettor of lawlessness in the Adivasis habitations, but also constantly undermining its own legitimacy, which is precisely the case of Kerala.

### ***Governance Rights***

The Constitution through Article 244 provides a basic frame for the sustained progress of Scheduled Tribes. Command over their ancestral domain or traditional homelands with its natural resources along with an admonition to the state government to protect the Adivasis and if not, the Governor of the concerned state being given the extraordinary power to supercede the decisions of the state and the President of India given the onus of guardianship of sorts, was expected to rein in any recalcitrant state. This combination of colonial dispensation mixed with paternalism further alienated the Adivasis. It was only with the passage of the Panchayat Raj (Extension to the Scheduled Areas Act) 1996 (PESA or popularly the Self-Rule Act)<sup>24</sup> the tide turned. PESA not only reflected the political aspirations of Adivasis, particularly in the mid-Indian region, but was itself an outcome of such a struggle. It was an explicit recognition of the failed larger Indian state in Scheduled Area which now is also in the grip of the fast spreading Naxalite movement<sup>25</sup> and counter offensive by the state in large parts of 187 tribal districts in the country. However, these resource rich areas are under fresh assault by predatory capitalism abetted by the growth-obsessed State, unmindful of the enormous social and environmental cost, and political fall outs. PESA now comes in direct conflict with the 'eminent domain' percept of the Indian state which it wishes to retain and deploy with all its might in the service of private, and increasingly, global capital riding roughshod on the Constitution.

PESA or self-rule is comprehensive in essence as they take into its ambit and encompass the total life of communities within its frame. Self-rule is a non-centralized participatory democratic system managing affairs of the peoples through consensual principles with focus on resolution of disputes. The subordination of the individual to the collective good, the natural right of the sovereignty of peoples, and the collective right to self-determination are essential components. The collective rights to the territory and command over resources and a conception, and realization of the conception through a system of participatory democracy and governance, a system of sustainable development

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<sup>24</sup> The Panchayats (Extension to the Scheduled Areas) Act, 1996 while extending the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas as referred to in Clause (1) of Article 244 also modifies Part IX by directing that the state laws shall be in consonance with traditional management practices of community resources (Section 4.a); every Gram Sabha shall be competent to safeguard and preserve the community resources (Section 4.d); approve the plans, programmes and projects (Section 4.e.i); identify and select beneficiaries (Section 4e.ii); and certify utilisation of funds (Section 4.f); plan and manage minor water bodies (Section 4.j); and control local plans and resources (Section 4.m.vii). Further the Panchayats at the higher level are not to assume the powers and authority of any Panchayat at the lower level or of the Gram Sabha (Section 4.n). This introduces the pre-eminence of the village panchayat, especially the gram sabha, as envisaged in Article 40. For the full text of the Act see <http://tribal.nic.in/acts/pesa.pdf> accessed on 28 March 2009.

<sup>25</sup> The Naxalite movement has spread to some 170 districts out of 626 districts in the country with 80 districts under its sway.

for the collective good with equity and justice as central to the development notion are also fundamental.

As early as 1961 the Kerala government had placed before the Scheduled Areas and Schedule Tribes Commission (Debar Commission), the proposal for scheduling certain areas. The total area recommended then was 1,064 square miles with a total population of 1,76,129 (1961 Census) out of whom 1,12,000 or 63.5 per cent were tribals. Almost half a century passed without any follow up. Sec.1 of Article 244 applies to the state of Kerala and with reference to the administration and control of Scheduled Tribes of Kerala. Article 244(1) defines 'Scheduled Areas' as 'such areas as the President may by order declare to be Scheduled Areas'<sup>26</sup>. The State government can pass a cabinet resolution proposing certain habitations in the State to be declared as Scheduled Areas under Article 244(1) by proclamation by the President of India vide powers vested in the President's office under Section 6 of Article 244(1). The resolution with the proposal is to be sent to the Central government. The Union Cabinet then approves the proposal and advises the President to notify the approved area as Scheduled Area<sup>27</sup>.

*The Report of the Members of Parliament and Experts to Make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd Amendment Act, 1992 to Scheduled Areas* (Bhuria Committee) in its report in 1995 makes the following pertinent observations and recommendations:

- Item 7(2) states 'It is note-worthy that some tribal areas in the country are covered neither by the Fifth nor the Sixth Schedules of the Constitution....The process of scheduling was commenced in the fifties and was resumed in the seventies as part of making the Tribal Sub-Plan and Scheduled Area co-terminus. But somehow it has remained incomplete. It is necessary that the remaining Tribal sub-Plan and

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<sup>26</sup> Sec. 6 Scheduled Areas - (1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order

(a) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area;

(aa) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(b) alter, but only by way of rectification of boundaries, any Scheduled Area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;

(d) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas; and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

<sup>27</sup> The President of India issued the Scheduled Areas (Part 'A' States) Order, 1950 declaring specified areas to be scheduled areas within the states specified in Part 'A' of the First Schedule (The States and Union Territories) to the Constitution of India. Subsequently, the president issued the Scheduled Areas (Part B States) Order 1950, the Scheduled Areas (Himachal Pradesh) Order 1975 and the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order 1977. Scheduled Areas are in existence in Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Jharkhand and Chattisgarh.

MADA areas, as well as similar pockets in West Bengal, Tamil Nadu, Kerala and Karnataka should be covered by Scheduled Areas notification'.<sup>28</sup>

- Item 28 under 'Summary of Recommendations' specifies that 'The process of Scheduling of tribal areas in the country earlier has remained incomplete. It is necessary that the remaining Tribal sub-plan and MADA areas as well as similar other pockets should be included in the Scheduled Areas'.

*The National Commission for Scheduled Tribes* also recommended in 2006 that: 'All the areas covered under Integrated Tribal Development Projects (ITDPs), Modified Area Development Approach (MADA) Pockets and Clusters included in Tribal-Sub-Plan of the States should be made co-terminus with the Scheduled Areas of the respective State'.<sup>29</sup> The Kerala government persists to ignore these recommendations despite the 16 October 2001 'agreement' with the Adivasi Dalit Samara Samithi (ADSS) to include Adivasi areas in the Scheduled Area.

Neither the Constitution nor any statutory law provides any specific parameters or criteria for determining the area that could be notified as a Scheduled Area. Therefore, the delineation of area was left to political executive to decide. However, the general guideline adopted is

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or taluk, revenue villages<sup>30</sup> and,
- Economic backwardness of the area as compared to neighbouring areas.

Bhuria Committee states in Item 21(3): 'Many of the present-day administrative boundaries were determined during colonial times based on colonial compulsions.....By and large, the earlier boundaries have stayed, with the resulting situation that tribal people are located, be it state, district or block, marginalising them in every way and fragmenting larger communities and areas. States should consider, say within a period of two years, reorganisation of the boundaries based on ethnic, demographic and geographic considerations.' The argument that there are no compact tribal areas in Kerala becomes redundant and irrelevant in the light of all these. Moreover, it is now indisputable in law that the fundamental unit of governance is the 'village' and not any other larger administrative unit.

The Bhuria Committee defined the primary unit of governance in the V Schedule for the first time in Item 22: 'The primary unit we contemplate may be a Gram Sabha or a hamlet, or a group of hamlets or a village, as the case may be, in a tribal area. It comprises a face-to-face community managing its affairs in accordance with well-established traditions and customs.....A hamlet/village comprising a community in a tribal area must be distinguished from the revenue village which is more of an

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<sup>28</sup> For the complete report refer [http://www.odi.org.uk/Livelihoodoptions/forum/sched-areas/about/bhuria\\_report.htm](http://www.odi.org.uk/Livelihoodoptions/forum/sched-areas/about/bhuria_report.htm) accessed on 28 March 2009.

<sup>29</sup> <http://ncst.nic.in/writereaddata/mainlinkFile/File415.pdf> accessed on 28 March 2009.

<sup>30</sup> The National Commission of scheduled Tribes recommended that 'All such revenue villages having 50% or more tribal population as per 2001 Census but presently not included in Scheduled Areas of the State (s), may be included in Scheduled Areas of the respective State.' See <http://ncst.nic.in/writereaddata/mainlinkFile/File415.pdf> accessed on 28 March 2009.

administrative entity. It must be clearly understood that in tribal areas hamlets are more common than big villages’

This became a part of PESA, an extension of the Constitution (an extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas) which primarily defines the governance rights of a ‘village’ in Scheduled Area where ‘a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs<sup>31</sup>’.

Further, the Forest Rights Act 2006 demands that the Gram Sabha demarcate and claim ‘Community Forest Resources’ (CFR)<sup>32</sup> to exercise their ‘right to protect, regenerate, or conserve or manage any community forest resource, which they have been traditionally protecting and conserving for sustainable use’<sup>33</sup> empowered to protect wildlife, forest, biodiversity; adjoining water sources and catchment areas, the habitat and cultural and natural heritage, regulating access<sup>34</sup> and ensuring that decisions are followed through suitable committees by the Gram Sabha<sup>35</sup>. The claims to individual and collective rights within the community forest resources are to be examined and determined by the Gram Sabha. As can be seen, the Forest Rights Act also follows the general frame of PESA which the Kerala government is legally now required to implement though there is no Scheduled Area in the state. This governance rights, fundamental to achieving the objects of the Act to rectify a ‘historical injustice’, is being denied in the true nature of Kerala, the failed state, who is all set to follow the failed track of state managed and controlled distribution of some land and resource rights which precisely is what is explicitly prohibited under the law.

The Plachimada struggle, another long running struggle of Adivasis since 2002 against life and livelihood threatening corporate crimes from pollution and depletion of ground water of the villages by Coca Cola, who established its plant amidst them, is significant with the resounding reluctance and failure of the political and administrative machinery to take actions against the criminal violator, despite specific provisions in

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<sup>31</sup> Section 4 (b) of PESA

<sup>32</sup> Sec.2(a) of Forest Rights Act states that ‘community forest resource’ means customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access

<sup>33</sup> Sec. 3(1) (i) of the Forest Rights Act

<sup>34</sup> Sec. 5 of the Act provides that:

*The holders of any forest right, Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-*

*(a) protect the wild life, forest and biodiversity;*

*(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;*

*(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;*

*(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with.*

<sup>35</sup> Rule 4 (e) under the Act on ‘Functions of the Gram Sabha’ requires the Gram Sabha to:

(e) constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act.

various laws. Instead, the government preferred to challenge the powers of the Panchayat which itself was forced to take action due to the struggle. Decisions have been arbitrary, susceptible and vulnerable to influence, red-tapism and corruption, in the chain of command. What has primarily emerged from the politico-administrative and judicial response are the contours of the power of the local self-government (Panchayat) with regard to their responsibility to public welfare, and the jurisdictional division of power between the Panchayat and the state government to protect and regulate the natural resources. The fundamental issues thrown up by the struggle is who has the primary decision-making rights over water, ground water in this case – the communities, the elected Panchayat, or the state; who decides and sets the priority over ground water use; and which is superior – water for survival or water for profit<sup>36</sup>.

With neo-liberal globalization, the commons in the entire state is sought to be enclosed and commoditized as private property to be policed and protected. The commons are the fundamental basis for existence of communities - their public space, their culture sphere, and their heritage - for society to function harmoniously. The commons are rapidly invaded, appropriated and transferred from communally managed resources to the 'market'. The 'commons' consists of the 'biodiversity' or 'genetic' commons, 'physical or environmental commons', the institutional commons<sup>37</sup> and the 'knowledge commons'. The ideological formulation in the 1980s followed by deregulation and dismantling of welfarism and withdrawal of the State from social spheres beginning in the 1990s, and now the active institution building such as regulatory bodies pushes governance out of public sphere to the private sphere of the market<sup>38</sup>. The recovery of the commons demand that communities take direct and popular control over resources and governance as a process of further democratization, establishing participatory democracy as the fundamental and dominant edifice of democracy forming the basis for representative democracy itself.

**What the Adivasi struggles have achieved in law in terms of command over resources and governance rights through decades of intense struggles can be the basis for the dawn of a new era of democratic resistance and reconstruction for the entire state, now under intense assault of neo-liberal globalization that has increasingly compromised, marginalized and weakened governance by the government, the state and judiciary. The Adivasi problematique now needs to be placed in this larger schema of transformation.**

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(Email: cr.bijoy@gmail.com)

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<sup>36</sup> See for instance Bijoy.C.R. *Kerala's Plachimada Struggle. A Narrative on Water and Governance Rights*, Economic & Political Weekly, Vol.XLI No.41, October 14-20,2006, pp.4332-39.  
<http://www.epw.in/uploads/articles/9348.pdf> accessed on 28 March 2009.

<sup>37</sup> Institutional commons includes public services which are 'public goods' that also include water, energy, essential supplies, environment and sanitation, health, education, transportation, infrastructure, information and knowledge.

<sup>38</sup> Bijoy, C.R. *Beyond Resistance And Cooption*. <http://www.countercurrents.org/bijoy020109.htm> accessed on 28 March 2009