

## **Politics of Dispossession: A continued case of conflict in Niyamgiri hills of Odisha**

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### **Abstract**

The balance between the overall economic development and costs borne by people and the environment in the immediate areas of mining is a serious challenge. Mining areas tend to be some of the poorest regions within countries with few alternative opportunities for significant poverty reduction. One begins with this question of political theorist Robert Dahl, who described the democratic ideal as, in making collective decisions, the interests of each person should be given equal consideration (Dahl, 1990, p. 85-88). When this is not adhered to in some sections, conflicts are inevitable. Conflicts also contain important differences in the objective structures of the various issues involved.

In this paper, we explore the struggle of the Kondh community over Niyamgiri hills with the mining company where the communities' core values and identity are less likely to be negotiable than other types of conflicts. The clash of world views is so fundamental that the only way to settle them is to enable Rawls's notion of procedural justice. This implies that resource allocation decisions should be regarded as just when they result from a fair decision-making process. In this paper, we highlight instances where the main features of procedural justice were not met.

### **Keywords**

Property Rights,  
Common Property  
Resources,  
Commons, Vedanta,  
Natural Resource,  
State, Environment,  
Justice,  
Communities,  
Kondhs, Niyamgiri,  
Odisha.

### **Introduction**

Conflicts have characterised societal relations since time immemorial; communities tussled over natural resources to guarantee survival and emancipation. The issue of entitlement to control over and/or benefit from natural resources is still a burning political issue in many parts of the

world. One such tussle that did attract considerable attention is the assertion of the rights by the tribals in Niyamgiri. What made this unique is that it is one of the rare instances where they were able to stall the might of both the governments and the multinational corporations.

The term 'natural resources' is used here in a deliberately open way: to refer to anything, derived from the environment, that is instrumental to satisfying human wants and needs. Something can be a resource for one person because it is instrumental to the satisfaction of his/her wants and needs, and not a resource for someone else because that person does not view the object instrumentally.

All human life involves the use of material resources and the question of control and allocation of these resources arise in every society. A primal concern of societies is to decide upon the basic principles of this allocation. The problem arises because resources are scarce, compared to the demands made on them. "Each society faces the problem of determining which, among the many competing claims on the resources available for use in the society are to be satisfied, when, by whom, and under what conditions" (Waldron, 1988, p. 39). Though, property regimes vary in nature across a continuum from pure public to pure private, three types of regimes are typically focused on: public property, private property and common property. They all differ in their ability to exclude non-right holders. (Waldron, 1988).

In the debates surrounding the issue of sustainable development and the need to conserve natural resources, the present neo-liberal framework hampers it. This is due to the pro-mining outlook of the state based on the need to provide an environment to enable 'ease of doing business'. The drive to grow rapidly has ensured resource surplus countries to extract resources at a pace like never before. Simultaneously the local communities have started asserting their rights. This has resulted in conflicts between the state, local community and the private sector like in the case of Niyamgiri. The struggle to mine over Niyamgiri hills was a long-drawn one despite the tribals having won over the mining company. In this paper, we highlight some of the glaring inadequacies of the system.

The paper is divided into the following sections a) property regimes b) key debates on common property rights (CPRs) c) key legislations d) Erosion of commons and dispossession e) The Niyamgiri Case Study f) Continued conflict g). Conclusion.

### Property Regime

A "well-defined" structure of property rights would have four important features, i.e., rights are universal, exclusive, transferable and enforceable. They all differ in their ability to exclude non-right holders.

*Open access property* denotes the lack of ownership and control. Examples include marine resources in international waters, the air, the atmosphere and open space. Access for potential users to exploit open-access resources is free and unregulated.

*Common property* implies a group property where a well-defined set of users has access and control rights over the resource. In a system of common property, rules governing access to and control of resources are organised on the basis that each resource is in principle available for the use of every member alike (Waldron 1988, p. 41). A common property regime shares some of its features with that of public property wherein no individual who has access to it stands in a specially privileged situation about any resource. Similarly, like the private property regime, the group excludes non-owners. Common property comprises collectively owned resources as diverse as irrigation systems, fisheries in national waters, common wells, common forests, pasture grounds, wastelands etc. Property rights can be vested with a tribe, village, clan or lineage, user committees, cooperatives, the municipality or the local government.

*State property* resources are formally under state ownership, for which the state ideally would enforce both access and conservation rules. In a public property system, the problem of allocation is solved by social rules. The rules drafted are expected to take the collective interest of the society as the focal point and the use of resources

is determined concerning this interest. An important question in political theory is that of who has entitlement to natural resources. State authority is typically justified in terms of people establishing justice and making decisions to govern their collective lives together. Control over natural resources is then justified as an extension of jurisdictional authority and (like jurisdictional authority) in terms of the moral value of collective self-determination (Simmons,2001).

**Private property** is organised around the idea that each object belongs to some individual. Here individuals (and private entities) maintain ownership and control over the resources. A rule is laid down that in the case of each object the owner of that object is to determine how the object shall be used. His decision is to be upheld by the society as final. Private property gives its owner a legal right to exclude others (Waldron, 1988).

While the legality of public and private property is readily accepted as common property, resources continue to be a contested concept. In the following section, we will examine some of the theoretical debates on common property resources.

### **Theoretical debates about common property resources (CPRs)**

According to the critics of CPRs, these regimes fail the efficiency criteria on multiple accounts. Firstly, since resources managed under CPRs are group property and nobody is in any privileged position to claim exclusive ownership, it results in 'rent dissipation'. Secondly, since devising and enforcing rules requires collective action and group consensus, transaction costs associated with CPRs are high. Thirdly, since, in a group property there is a loose connection between personal efforts and returns, the resource is bound to suffer from low yield (Ostrom 1999).

Another point of criticism against CPRs is the 'economic rationality' argument. Accordingly, even if a strict rule in the use of a resource is

agreed upon by the user group, collective action required for observing that rule is bound to fail since a rational individual will find it to his own benefit to ignore the rule and over-exploit the resource, with the perception that if he does not capture the benefits others will do so. The notion was described as the tragedy of the commons. It is based on views articulated by Locke that when land is held in common for general use, and without authoritative rules governing its use in the common interest, there is little incentive for any particular person to invest their time and effort in developing the land to improve its productivity. For Locke, Nozick and others, the moral of the story is that, given the tragedy of the commons, exclusive ownership and control of the land (private property) is likely to make everyone, even the property-less, better off overall.

Garret Hardin's much-cited and often criticised "Tragedy of the Commons" (1968) hypothesised that common resources lacking ownership were doomed to over-exploitation. CPRs were seen as the causal factor behind resource destruction because it would be in users' private interest to harvest the resource as soon as possible before other users did so. In the absence of property rights, the externality of future scarcity is not internalised by individual users and the outcome is inefficient high-intensity utilisation. The consequence is overgrazing, overfishing, appropriation of irrigation water by head-enders, clearing of forests and so on. Such resource use is inefficient because at a lower intensity of use, resource stock and output would be higher, and harvesting costs lower. Furthermore, overuse can endanger the sustainability of the resource. He then concludes "Each man is locked into a system that compels him to increase his herd without limit - in a world that is limited. Ruin is the destination towards which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons" (Hardin, 1968, p. 1244). He believes that the only solution to this problem is coercion by an external authority.

The 'tragedy of the commons', as set out by Hardin, is a variant of the prisoner dilemma, and hence closely connected to Olson's Logic of Collective Action (1965). Summing up, the common theme running among all three of these models is the free rider problem. The models discussed above provide a rationale for an external agency to take control, some recommend a state control while others opt for private control. This argument justified the enclosure of the commons. Evidence from around the world points out that neither state nor private regimes have necessarily been successful in the effective management of common pool resources.

Criticism of Hardin's allegory is his failure to distinguish an open access regime from a common property regime. Focussing on Hardin's no communication and no information assumption, it implies that each herdsman is not aware of the action of the others, the overall condition of the commons and that it is heading toward total 'ruin'. This implication brings out the issue of information people have about the larger system and environment in which they operate (Hasan, 2002). Of late commons scholars have also been keen to demonstrate that markets or private property arrangements and public ownership or state management do not exhaust the range of plausible institutional mechanisms to govern natural resource use.

Ostrom's work highlights that there is another solution to this problem: to establish a legitimate collective control, with jurisdictional authority over natural resources (land, water, minerals in the ground, etc.) to ensure that the uses to which they are put, conform to the common good. In developing countries, common property systems are still quite widespread and involved in the management of many diverse natural resources. Many authors have documented how societies all over the world manage their common property using detailed and complex rules adapted to local ecological and technological circumstances.

Despite all these debates the Governments in India at the Centre and the State forcibly acquired land for projects of the state. The inevitable

application of the utilitarian indices resulted in the belief that some people will have to sacrifice in the interest of the nation and the larger 'good'. This was legalized in the form of 'eminent domain'. It is a well-known ecological fact that the best-known forests, river and ocean basins and fertile landscapes all over the world, are also rich below the ground with natural resources such as fossil oils, and metallic and non-metallic minerals. One of the most contested areas in this context is how States have repeatedly used the concept of eminent domain to acquire land for mining purposes. After independence, as Usha Ramanathan (2009) explains, the Supreme Court had to address the issue of eminent domain, which was now contested by the landholders in India. "In explicating the power, the court held that eminent domain was 'the power of the sovereign to take property for public use without the owner's consent. The meaning of the power in its irreducible terms is (a) power to take, (b) without the owner's consent, and (c) for the public use.'" It is this that has led to erosion of commons, displacement and dispossession of the weakest sections of the society.

### **Erosion of Commons and resultant dispossession**

The consequences of displacement show in varying forms of 'insecurity' on the one hand and lack of state protection on the other. This is because socio-temporal order gives society predictability, and sets priorities and meaning. Its destruction spells chaos and the resulting restlessness and disorder. Cernea (1996) points out some eight sub-processes converge in impoverishment. These, according to him, are landlessness; joblessness; homelessness; marginalisation; increased morbidity; food insecurity; loss of access to common property and social de-articulation (p. 1518).

Attachment to places may transcend the unique experiences of individuals and involve the constellation of social relations and the cultural values that inform them, of entire groups or communities. Displacement results in "...dismantling production systems, severing

trade and market links, desecrating ancestral sacred zones, graves and temples, scattering kinship groups and extended families and weakening cultural systems of self-management and control. The consequences are especially severe for women. They lose access to fuel, fodder and food they traditionally collected for their household from common lands. They thus face increased pauperisation and are thrust into the margin of the labour market.” (Kothari, 1995). Scudder describes resettlement as a “multidimensional insult with psychological, physiological and socio-cultural components” (1993, p. 131). He believes that a community undergoes a sense of failure. The Kondh community were facing such a situation as a result of the government of Odisha’s decision to permit Vedanta to mine Niyamgiri hills.

### **Legislations to safeguard commons in India**

The Wildlife Protection Act, of 1972 was enacted to effectively protect the wildlife of the country and controlling poaching, smuggling and illegal trade in wildlife and derivatives. It also includes the protection of listed endangered flora and fauna in important protected areas. There is a blanket ban on carrying out industrial activity in protected areas. There are stringent punishments for the offences under the Act.

Forest (Conservation) Act, 1980 was passed to protect forests by controlling the rates of deforestation. Under the Act, the central government is vested with powers to make any new rule or make changes in the existing laws. It restricts the state government’s power to make any decision related to forest matters mentioned in the act without prior permission from the central government. It also prescribes penalties for those who contravene with any provisions of this Act. The Ministry of Environment Forest and Climate Change (MOEF&CC) are mandated with a comprehensive policy for inspection, verification and monitoring process of forest clearances and identification of forests in consultation with states. All diversion proposals

for forest land diversion for non-forest use irrespective of ownership requires prior approval of central government.

The Environment (Protection) Act, 1986 authorises the central government to protect and improve environmental quality. It also allows to control and reduce pollution from all sources and prohibits or restricts the setting/ operation of any industrial facility on environmental grounds. It empowers the Central Government to establish authorities charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country.

Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was enacted to ensure that people living in Scheduled Areas of India engage in self-governance through traditional gram sabhas. It endows the Panchayat in Scheduled Areas with such powers and authority that would enable them to function as institutions of self-government. The state government has to ensure Panchayat at appropriate level and the Gram Sabhas are endowed specifically with ownership of minor forest produce, power to prevent alienation of land in Scheduled Areas. It also includes taking appropriate action to restore any unlawfully alienated land of Scheduled Tribe. It also provides power to control over local plans and resources inclusive of tribal-sub plans.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, (Forest Rights Act) recognises and vests the forest rights and occupation in forest land in Forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) who have been residing in such forests for generations. It establishes the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of the ecological balance of FDST and OTFD. It identifies four types of rights: title rights, use rights, relief and development rights and forest management rights.

The Act expands the mandate of the Fifth and Sixth Schedules of the Constitution that protects the claims of indigenous communities over tracts of land or forest they inhabit.

The National Green Tribunal Act, of 2010 was enacted to establish the National Green Tribunal for effective and expeditious disposal of cases related to environmental protection, and conservation of forests and other natural resources. It deals with all environmental laws related to air and water pollution.

However, as the struggle in the Niyamgiri region shows the legislations have not always been effective in protecting the people dependent on CPR. In the following section, we will examine this with reference to Odisha (earlier Orissa) a state with an apt example of being ‘cursed’ with resources.

### **Niyamgiri Case Study**

This section of the paper will deep dive into several elements related to the mining over the Niyamgiri hills that are located in the state of Odisha. They include the role of the stakeholders and some of the key processes that transpired in the outcome. It would include the following: i) Odisha Mineral rich state in conflict ii) Mining Company- Vedanta Resources iii) About the project iv) Anti-Vedanta Protest v) Judicial Intervention vi) Villages Vote

### **Odisha – Mineral-rich state in conflict**

Odisha is located in the east part of India with a geographical expanse of 55,707 sq. km and a coastline of 485 sq. km. Three-fourths of the state’s land is occupied by mountains and 37.3 per cent is covered with forest with majority of deciduous type. The governance structure includes 30 administrative districts of which 12 have a sizeable tribal population. According to the 2011 Census, the state population is 4.197 cr. and home to 62 Scheduled Tribes 93 Scheduled Caste and 13 Primitive Tribal Groups (PTGs). (ST & SC Development, Minorities & Backward Classes Welfare Department, n.d., para. 3).

The mineral wealth of the state is spread over 6000 sq. km due to its geological set-up. It is the aluminium capital with reserves of more than half of the country’s bauxite ore ideally suited for aluminium companies. It also accounts for more than 35 per cent of total iron ore resources of the country. With 34.3 per cent of the national mineral production share, Odisha leads the way. It ranks first in the production of Bauxite, Chromite and Iron ore, second in Coal and third in Manganese ore. The share of mining in the State’s own revenues increased from 2.6% in 1990-91 to 23.50% in 2018-19. (Environment Information System (ENVIS) Centre on Ecology of Eastern Ghats, n.d., pp. 13). The value of external trade of the state in 2018-19 grew to Rs. 47,619 cr. with Metallurgy contributing 55 per cent and minerals at 20 per cent of the total value. The Foreign direct investment in this metallurgy sector saw a pledge of Rs. 2,36,000 cr in 2018 that contributed 50 per cent of total investment (India Brand Equity Foundation, 2020, pp. 29-31; The Hindu Business Line, 2018, pp. 5-10).

If we look at the state’s performance on poverty numbers, two of the largest communities 74.5 per cent Scheduled Tribe and 61.3 per cent ScjedC are below the poverty line. With these communities concentrated largely in the north and south of Odisha, it coincides with a lack of growth in these regions as well. Niti Aayog ranks Odisha 14th among the big states behind the poverty line at 32.59 per cent compared to the national average of 21.92 per cent. Though there is poverty reduction the poverty levels remain higher. This has been attributed to natural resource-led industrialisation and service by the state without value addition. (Niti Aayog, 2018, p. 20).

A latest study investigating the resource curse hypothesis in mining-rich districts of Odisha find there is a negative relation between natural resource and economic growth. It is due to weak institutions and a lack of appropriate policies (Tandi & Mishra, 2020, p. 191). These findings are echoed even in a World Bank study where mineral-based growth has led to environmental and social challenges in the state. Bhushan &

Hazra (2008) contend that states like Jharkhand, Chhattisgarh and Odisha have high levels of dependence on mineral resources and demonstrate low per capita incomes compared to states that are not completely dependent on mineral wealth like Tamil Nadu, Maharashtra and Gujarat. The study points out that mineral-dependent states also have higher levels of poverty, lower growth rates and higher levels of mortality, morbidity and morbidity. The mineral dependence associated with retarded economic performance phenomenon is termed a resource curse (p. 15).

To increase the state's productivity and to cash in on the treasure chest of resources, the Government of Odisha signed 79 MoUs with various companies to set up mineral-based industries, with a total proposed investment of US \$606.95 billion. One such agreement was signed with Vedanta Aluminium Limited (VAL); a subsidiary of Vedanta Resources plc, for the development of an alumina refinery and a bauxite mining plant in the most environmentally diverse region of the Niyamgiri Mountains in Odisha (George, 2014). This project was meant to aid the state's industrial growth and to enhance the public's economic standard.

### **The Company- Vedanta Resources**

The origins of Vedanta Resources Plc go back to 1979 when Anil Agarwal made an acquisition of Shamsheer Sterling Corporation, a company trading in metals. Vedanta Resources Plc. is one of the leading diversified natural resources companies in the world, with operations spanning across a vast value chain of exploration, asset development, extraction, processing and value addition. Geographically, the operations are centred in India, Sri Lanka, Zambia, Namibia, South Africa, Liberia, Ireland and Australia with an employee strength of over 28,000 people. The group has undertaken several Greenfield and brown-field expansion projects throughout the world; and completed capital expansions, involving complex project technologies and large investments, in record time and at significantly lower costs.

Sterlite Industries (India) Limited (SIIL), a subsidiary of Vedanta Resources, proposed the development of Aluminium refinery and bauxite mining in the Niyamgiri Hills of Orissa state in India. Vedanta Resources was a Financial Times Stock Exchange (FTSE) 100-listed company delisted in 2018. Vedanta Ltd incorporated SIIL in January 2001; the name was changed to Vedanta Alumina Ltd (VAL) in January 2004 however the company was again renamed as Vedanta Ltd on August 25, 2007. The agreement to develop an open cast bauxite mine in the Niyamgiri hills of Orissa was signed between VAL (earlier known as SIIL) and the Orissa Mining Corporation Limited (OMC), a company owned by the State of Orissa on October 5, 2004

### **About the Project**

The Niyamgiri hills are located in the Kalahandi and Rayagada districts of Odisha rich with 73 million tons of Bauxite ore in Odisha. The hills are home to more than 8,000 of the Dongria Kondh people, whose lifestyle and religion have helped nurture the area's dense forests and unusually rich wildlife. It is over these hills that Sterlite Industries (India) Limited (SIIL) subsidiary of Vedanta Resources decided to mine for bauxite. As part of its project, SIIL signed a Memorandum of Undertaking (MoU) with Orissa Mining Corporation Limited (OMC) in 1997 to set up a 1 million ton per annum (mtpa) alumina refinery based on bauxite reserves in Kalahandi district and 720 MW Captive power plant. The public hearing for the project was conducted in 2003. In the same year a fresh MoU was signed between SIIL and OMC to source bauxite ore from Niyamgiri hills at 3 mtpa. At this rate the expected life of the resource would be twenty four years. The ore and refinery are to be connected by the conveyor belt with the plant in Lanjigarh at the base of the hill.

In 2004, SIIL received environmental clearance (EC) for the refinery from the Ministry of Environment and Forest (MoEF) by delinking it from the mining project. After receiving its EC, the SIIL applied for forest clearance for the use of 58.943 ha of forest land via the State government.

OMC signed a new agreement with VAL another subsidiary of Vedanta Resources for the refinery and mining project. Three petitions were filed to the Central Empowered Committee (CEC) of the Supreme Court on grounds of alleged violations of Scheduled V provisions of the Indian Constitution, forest conservation, environment laws and wildlife issues. During the course of investigations, the CEC raised the issue of the validity of environmental clearance granted to the refinery in view of the involvement of forestland and whether the environmental clearance had been cancelled. MoEF issued a stop work order and directed any further construction shall be taken only after obtaining the Forest Clearance. VAL informed MoEF that for project implementation, they did not need the forest land so the stop work order would not apply. The CEC in its report to the Supreme Court concluded that the refinery project was given environmental and forest clearances based on 'inaccurate information' and the decision 'smacks of undue favour/leniency'. It also recommended that bauxite mining should not be allowed in the Niyamgiri Hills, an ecologically sensitive territory (Jiwrajka, 2005).

On the direction of the Supreme Court, the Wildlife Institute of India, Dehradun, prepared two reports on the mining project's potential impact on wildlife habitats and the Central Mine Planning and Design Institute, Ranchi, prepared a report on the potential hydro-geological impact. The Norwegian Government Pension Fund divests all its shares held in Vedanta Resources after a recommendation made by its Council of Ethics. The ethics council found that 'allegations levelled at the company regarding environmental damage and complicity in human rights violations, including abuse and forced eviction of tribal people, are well founded.' (Ghosh, 2007, para. 9). In August 2008, the Supreme Court recorded the matter of divestment by the Norwegian pension fund but cleared the mining project with certain conditions on sustainable development of local communities, protection of the environment and conservation of wildlife (Amnesty International, 2010).

During the court case, VAL applied for environmental clearance for a six-fold expansion of its refinery. MoEF granted in-principle environmental clearance in April 2009 for a bauxite mining project. During the same month, OSPCB conducted a public hearing on refinery expansion that local communities favour the project despite significant opposition and protests (Amnesty International, 2010). The environmental clearance for mining was challenged in July 2009 at the National Environmental Appellate Authority (NEAA) (henceforth NEAA case) by some of the locals residing around Niyamgiri Hills and others. It was on the grounds that there was no fresh data and all the information is more than 3 years old in the EIA. The public hearing mentioned was part of the earlier process that was closed for consideration by the Ministry. In its September 2010 judgment, NEAA found that Rapid EIA of 2005 on the basis of which Environmental Clearance was granted but never in the public domain for people to express their views and concerns during the public hearing conducted in 2003. The NEAA directed the MOEF to revisit the environment clearance including the public hearing and take appropriate action. Till then the EC was suspended.

Under the Forest (Conservation) Act, of 1980, the matter related to forest diversion or non-diversion was referred to Forest Advisory Committee. The FAC of MoEF appointed a three-member committee of Usha Ramanathan and others to enquire into the allegations regarding the violation of the Forest (Conservation) Act, 1980, to address concerns regarding tribal rights and wildlife conservation issues. This group recommended further examination on various grounds, subsequently, the minister of MoEF set up a four-member committee chaired by N.C. Saxena to investigate the proposed diversion of forest land in Kalahandi and Rayagada districts of Odisha for bauxite mining (Seth, 2010). While indicting Vedanta, OMC, the bureaucrats of the state and central government, the report found that a) Vedanta lied that no forest lands would be enclosed by the refinery b) the process of informed assent of gram sabhas as required by



FRA was not followed c) securing consent of village panchayats by PESA not followed d) the six-fold expansion of refinery was illegal e) the EIAs were fast tracked making it impossible to assess the environmental impact of refinery and mine over few years and in seasons of drought and normal rainfall f) during one of the hearings the public opposition was overwhelming yet in the report the state government averred that project had local support (Krishna, 2015). The Saxena committee findings were endorsed by FAC and accepted there was a lack of diligence in safeguarding the rights of PTGs in adjoining forest areas and found the case fit to apply the precautionary principle to obviate the irreparable damage to affected people. The FAC recommended temporary withdrawal of in-principle stage one approval accorded by MoEF for the diversion of 660.748 ha of forest land in favour of OMC (Venkatesan, 2010, para. 24). On August 24, 2010, MoEF rejected the application for bauxite mining in Niyamgiri Hills. This decision made the first stage of forest clearance and the Supreme Court judgement of 2008 inoperative. The mining clearance for Vedanta was rejected on three major grounds: violation of the Forest Rights Act (FRA), 'the blatant disregard' to the rights of the tribal groups dependent on the area for their livelihood, violation of the Forest Conservation Act and the Environment Protection Act (EPA). (Jishnu, 2015, para. 10)

Though VAL was only authorised capacity of 1 mtpa but they ramped it up for 6 fold expansion without necessary clearances. The company was questioned by MoEF on why the permission for the current facility should not be revoked, especially with concerns over sourcing of bauxite from mines in Jharkhand that have not obtained environmental clearance. In a report submitted by V P Upadhyay, director of the ministry's eastern regional office, said one out of the 14 mines from which bauxite was sourced is licensed (Jishnu, 2015, para. 8). The VAL representative denied the illegality and pointed out that none of the mines were named and that most of their bauxite came from Chhattisgarh.

In the case filed with Supreme Court, OMC approached seeking *Writ of Certiorari* to quash the order passed by MoEF rejecting the Stage-II forest clearance of 660.749 ha of forestland for mining of bauxite ore. In its verdict, the Supreme Court ruled that gram sabhas of the affected areas had to decide whether the proposed mining area Niyam Danger, 10 km away from the peak would in any way affect the abode of Niyam-Raja. It directed the state of Orissa to place all these issues before the Gram sabha; notice was to issued to Ministry of Tribal Affairs (MOTA), Government of India. The decision on them was to be taken within three months and the same to be communicated to MoEF. The MoEF was to take the final decision on grant of Stage II clearance for Bauxite Mining Project only after the gram sabhas vote. It also directed the alumina refinery project to rectify the alleged violations of environmental clearance granted by MoEF. (Orissa Mining Corporation v. Ministry of Environment & Forest & Others, 2013).

While the project was mired in legal controversy protests broke out.

### **Anti-Vedanta protest**

Protests against Vedanta Resources started immediately, and initially, local activist-minded citizens led the protests, including some professional activists who were opposed to the project, and Kutia Kondhs, who, like the Dongria Kondhs, are part of the larger Kondh group. When it later became known that Vedanta Resources was also planning to acquire and mine the Niyamgiri Mountain, which was estimated to contain approximately 73 million tonnes of bauxite (Temper and Martinez-Alier 2013), the Dongria Kondhs, who lived on the mountain and worshipped it, were inducted into the protest movement against the company and the movement shifted its focus to concentrate on opposition to the mining project on Niyamgiri. Since 2002 the multinational company behind this project, Vedanta Resources, has faced considerable opposition from a continually evolving alliance of local communities, Indian activists and political organizations, as well as

international activists and non-governmental organisations (NGOs) such as ActionAid and Survival International. Activists and campaigning organizations put forward five core arguments against the mine at Niyamgiri that are emblematic of the criticism of extractive industry projects around the world:

- (1) Vedanta's mine would heavily impact a unique ecosystem inhabited by rare plant and animal species and the base of the Dongria Kondh's subsistence lifestyle.
- (2) That it would affect the streams, and water table, threaten fresh water supply to the Dongria Kondh and tens of thousands of farmers downstream.
- (3) That this mine would be followed by others and create a precedent for mining and logging of the entire range of mountains.

(4) That minerals-based industrial development would result in tremendous negative economic and socio-cultural effects for the Dongria Kondh whose more or less sustainable subsistence lifestyle and unique culture would be threatened by resettlement, the influx of outside workers, rising crime and other social issues prevalent in mining regions and the overall influence by mainstream capitalist culture.

(5) And, finally, that the expected economic benefits of the mine would accrue not to the tribal people who were most negatively affected and that it would be impossible to financially compensate for the actual environmental and social externalities created

Table 1 gives the details of various groups that were involved in the protest at various points.

**Table: Organisation opposing bauxite mining project**

Groups	Support
<b>Local Groups</b>	
Academy for Mountain Environics	Legal Support
Green Kalahandi	Grassroots organisation, Political
Legal Initiative for Forest and Environment (LIFE)	Legal Support
Lok Sangram Manch	Grassroot Organisation
Lok Shakti Abhiyan	Legal Support, Grassroot Organisation/Mobilisation, Research and Advocacy
Niyamgiri Suraksha Samiti	Grassroot Organisation
Peoples Union of Civil Liberties (PUCL)	Ground Reports
Sachetan Nagrik Manch	Grassroot Organisation
Samajwadi Jan Parishad	Grassroot Organisation, Political
Wildlife Society of Odisha	Legal Support

<b>International Groups</b>	
Action Aid	Grassroot Organisation, Shareholder Activism, International Advocacy
Amnesty International	International Advocacy, Shareholder Activism, Ground Reports
Foil Vedanta	International Advocacy, Shareholder Activism
Survival International (SI)	International Advocacy, Shareholder Activism
<b>Political Parties</b>	
Communist Party of India (Marxist–Leninist) New Democracy (CPI-MLND)	Grassroots organisation, Political

Organisations like Survival International, Amnesty International and Foil Vedanta visited the protest site in India regularly and also organized mass rallies outside the company's London office. For seven years, Survival International organised demonstrations at the Annual General Meeting of the company in London. The organization also launched an international campaign, encouraging major shareholders of Vedanta Resources to disinvest in the company until it removed its operations from Niyamgiri. Witnessing the company's atrocious treatment of the Dongria Kondh and its involvement in the blatant violation of human rights, many international investors like the Norwegian Government Pension Fund, Martin Currie, the Church of England and Marlborough Ethical Fund sold their stocks in the company.

The protest movement was fractured by internal differences and differing standpoints they took on the issue. For instance, indigenous activists have been angered by incidents like Survival's co-option of a young tribal man, whom they paid and resourced to act as their spokesperson; but his exposure to the urban elites ultimately led him to become Vedanta's PR representative, doing untold damage to the movement. Action Aid and Survival's images of the Dongria Kondh tribe were criticised by local leaders for essentialising them and making them look like victims.

Amnesty's report 'Don't mine us out of existence' used interviews with Dongria people to ultimately make the recommendation that Vedanta should look for other mountains to mine in the area, a viewpoint to which the Dongria are totally opposed. Local opposition resulted in the recommendation being removed from the final version. Action Aid has also been criticised for their conflicts of interest in the campaign. In 2003 they accepted a £40,000 (41 lakh Rs) donation from Vedanta subsidiary Sterlite for homeless shelters in Delhi. In 2010 Action Aid's Corporate Social Responsibility arm 'Partners in Change' was part of a jury which awarded Vedanta a 'Best Community Development' award for its 'good work' around the same Lanjigarh refinery which they were supposed to oppose, prompting a protest outside Action Aid's Odisha office that lasted several days. Action Aid, widely believed to be a critical and radical campaigning organisation, also had partnerships with major Indian bank ICICI (one of Vedanta's key funders) and the highly controversial oil and gas company Essar Energy who sponsored Action Aid's Freedom Run in 2011.

The friction in the anti-Vedanta struggle added to the prolonging of the struggle.

## Judicial intervention

In T.N. Godavaraman Thirumulpad vs Union of India and Ors. In I.A. Nos. 1324 & 1474 With I.A. Nos. 2081-2082 @ W.P. (C) No. 549/2007 and I.A. NO.2134 of 2007 is related to the set-up of refinery project, captive power plant and bauxite mining by SAIL/VAL and OMC in Lanjigarh. Three petitions were filed before the Central Empowered Committee (CEC) of the Supreme Court against the project. The CEC found there were no in-depth studies about the effects of proposed mining on the water regime, flora, and fauna and on the Dongria Kondh tribes living in Niyamgiri hills. Vedanta was accused of wrongful information and circumventing the law. The CEC recommended the environmental clearance for the refinery project be revoked and mining operations in Niyamgiri be banned. The Supreme Court did not follow the advice of its own CEC. The Supreme Court sought to strike a balance between development and environmental protection. It listed out a rehabilitation package to form a Special Purpose Vehicle (SPV) for Scheduled Area Development. This included a deposit of five per cent of total profits before tax and interest or Rs. 10 crore, whichever is higher. The court granted clearance for the forest diversion proposal to carry out bauxite mining on Niyamgiri Hills in Lanjigarh. It issued orders to MoEF to grant approval in accordance with the law.

In NEAA, Appeal of 18-21 of 2009, the appeals were filed against the Environmental Clearance granted to Lanjigarh Bauxite Mining Project of M/s OMC. They were related to public hearings, EIA reports, biodiversity in the area and environmental clearance ignoring the Dongria Kondh tribe. The NEAA observes that the EIA on the basis of which the Environmental Clearance was granted was never in the public domain for people to express their views or opinions during the public hearing hearings in 2003. The Rapid EIA by Vimta Labs lacks analysis with respect to human miseries due to the project. The NEAA in its verdict directed MoEF to revisit the environmental clearance including the public hearing aspect and take appropriate action.

Till then the environmental clearance stands suspended.

In the Supreme Court W. P. (C) No. 180 of 2011 in the matter of OMC vs MOEF, OMC approached the court seeking a Writ of Certiorari to quash the order passed by MoEF dated 24.8.2010 rejecting the Stage-II forest clearance for mining of bauxite in Lanjigarh Bauxite mines in Kalahandi and Rayagada. The judgment focused on the rights of the Scheduled Tribes and Traditional Forest Dwellers under the Forest Rights Act.

The court was concerned whether STs and TFDs like Dongria Kondh, Kutia Kondh and others have got any religious rights i.e. rights of worship over the Niyamgiri hills, known as Nimagiri, near Hundaljali, considered by the Gram Sabha. The gram sabhas were also to consider whether the proposed mining area Niyam Dangar, 10 km from peak would affect the abode Niyam-Raja. If the bauxite mining project affects the religious rights, they've the right to be preserved and protected. This issue was not dealt with earlier. The gram sabha was also free to consider community, individual, cultural and religious claims over and above the claims already received from Rayagada and Kalahandi districts. It directed the state of Odisha to place these issues before the Gram Sabha and communicate the same to MoEF. On this basis the MoEF would take a final decision on the Stage II clearance for the mining project. It also directed the alumina refinery project to take steps to correct and rectify the alleged violations in terms of environmental clearance granted by MoEF.

## Villages vote

The Supreme Court asked the forest dwellers to decide if mining in Niyamgiri hills would affect their religious and cultural rights. Following this, the Odisha government drew a list of 12 villages "likely to be affected" in Rayagada and Kalahandi districts, to hold palli sabha. The list drew flak from the Ministry of Tribal Affairs (MoTA) because it limited the number of villages that can have a say. Niyamgiri Suraksha Samiti, a local resistance group, claims mining will affect at least 112 villages.

Figure 1



Source: Bera, S. (2013)

Though many protested the Odisha Government's decision to carry out voting in just twelve villages, nearest to the contested bauxite deposit, with Maoists advocating a boycott. The final result of a unanimous vote against mining in all twelve confirmed fair play. In each of these gram sabhas held over July-August 2013, 12 villages explained their opposition to mining in ecological, religious and food security terms. On July 18 this clash of world views played out starkly in Serkapadi village—the venue of the first palli sabha meeting. The event had no parallels in India's history. The judiciary had come down to the doorstep of the Dongria Kondh to record their decision on proposed mining by Orissa Mining Corporation Limited and Sterlite, a subsidiary of mining and metals giant Vedanta.

Amid heavy security cover of Central paramilitary and state forces, unlettered forest dwellers—Dongria Kondh and Kutia Kondh tribals, and Gouda and Harijan non-tribals—spoke of a religion embedded in the hill's pristine ecology. They told the district judge, appointed

observer to the meetings by the apex court, that mining will destroy their god and their source of sustenance—over 100 perennial streams, fruit trees like those of jackfruit and mangoes, spices like turmeric and ginger, wild roots, tubers and mushroom, apart from the land for shift and burn cultivation, *dongar*, where they grow an enviable mix of native millets, pulses and oil seeds. “Jharna, pani, paban, patra... sob loss hai jibo (streams, water, air, leaves... everything will be lost),” said Tunguru Majhi, a Kutia Kondh tribal at the Kunakadu palli sabha, village council meeting. “We will die like Birsa Munda and Rindo Majhi (both Munda and Majhi led tribal uprisings against the British) if you don't give up now. We are a murkhya jati (illiterate lot) who will never listen to you.” (Bera, 2013). The Niyamgiri vote represents not only Dongria, but also many Dalits and members of Bhaujan Samaj, who voted alongside them.

### Continued Conflict

In January 2014, based on the Gram Sabha hearings and resolutions, the environment ministry denied forest clearance to the proposed bauxite mine. Significantly, the only case so far where the voices of Adivasi residents have been heeded in this manner in state decision-making around privatising forested commons. The Dongria Kondh would have imagined that their struggle would come to an end, but it was not the case. The resolutions of gram sabha of 2013 is what the Odisha government wanted the court to annul, thus mounting a renewed bid to mine Niyamgiri. The environment ministry rejected all clearances granted to the Vedanta project. On February 25, 2016, the OMC applied with the Supreme Court alleging that the resolutions of the Village Assemblies had technical errors. On May 6 that year, the apex court upheld its earlier judgement by rejecting the state government/OMC petition.

The Niyamgiri region witnessed several Maoist activity which has led to constant disruption. The Maoists have torched vehicles, land mine blast called for *bandhs*, abductions and indulged in other disruptive actions. To prevent these, the

state set up camps of paramilitary forces in the region to create a safe environment for the locals and even the industries in the region. It also led to regular and frequent surveillance from the forces and the creation of a tense atmosphere especially when a violent activity takes place. The Maoist and security forces regularly suspect the tribals of informing or being a sympathiser to the other group. In the bargain many locals have been picked up by the police, arrested, tortured encountered and killed. This has brought in a tense atmosphere and a hostile environment for the locals who have been living here for generations. The combing operations against the Maoists have also led to deaths in the region. In April 2017, the Union Home Ministry came up with a decision to link the Niyamgiri Suraksha Samiti (NSS) to the Maoists. In its annual report, the ministry wrote, "In the Niyamgiri Hills area (Districts Rayagada and Kalahandi, Odisha), the outfit [the Maoists] continued to guide the activities of the Niyamgiri Suraksha Samiti." The threat of being branded a Maoist and put behind bars is a threat that the Niyamgiri tribals live with. Summarising the current situation in Niyamgiri "In current trends, there is a basic services withdrawal by the state which has no relation with investment or no investment. In many areas of welfare activities like health, and food security, the state is withdrawing and giving it to NGOs, companies and it is not a good idea. The state has a particular role in the constitutional scheme of things and basic services like health education are to be provided. It is a complete myth promoted by agencies and project proponents that without their investment there cannot be any development. It is not such a case. If you do a comparison in Niyamgiri in the pre-project and post-project phases what has happened is the entire area is a conflict zone and they were better off earlier. Even now and then you get to read news and reports on how the people have faced conflicts because of CRPF camps, and search operations and one can say people were better off earlier. With projects coming all kinds of conflicts have also come in. Vedanta or no Vedanta the state has to provide for the community for the tribal that is the mandate."

There are several news emerging from the Niyamgiri region where the conflict continues over the elusive bauxite reserves. A question that emerges is whether there is a stop this battle or struggle and there be a resolution?

In 2019 the well-known NSS leader Lingaraj Azad was arrested and labelled as Maoist sympathiser and supporting the activities of Ultras. In August 2023, Odisha's well-known social activist and Goldman Environmental Prize-2017 was kidnapped and later released. This took place on the day he was to address a press conference after meeting protestors against mining in Sijimalli hills. Vedanta has received the bauxite mines in Sijimalli reserve in Odisha's Kalahandi and Rayagada districts in February this year. The public hearing held in October 2023 for environmental clearance ended abruptly with villagers opposing the project and being concerned about the water resource being destroyed. A new battleground at Sijimalli Hills.

## **Conclusion**

The state has to play a multi-role and carry out a balancing act. Given the case of Niyamgiri, it only sided with the interest of the mining company and continues to do so by shifting to a new hill and reserves to facilitate bauxite supply for Vedanta. The state requires a fresh approach instead of following the one they already adopted. A new approach is required to keep the interests of all stakeholders into account. The state needs to bring in more efforts towards being a welfare state rather than being a business or an economic state.

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