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## 2. Adivasi Land Rights and Dispossession

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Land as a social justice concern for Adivasis has a long historical precedent in rebellions and struggles across central India (Arnold 1984; Pati 2011; Bates and Shah 2014). Claims for land rights make emotive demands for both the recognition of a unique identity and the material redistribution of resources. On paper, strong laws exist to give formal support to these rights, but these have never been implemented more than half-heartedly, and even then with much variation between states and even across territories within states. However, rights enshrined in laws remain as important mobilisation factors for movements working towards their actual implementation. While significant similarities exist across the Adivasi areas of central India, specific historical circumstances differ, owing, for example, to the fragmented governance of British India, with its many princely estates, or to cultural and ecological variations across regional landscapes. These factors continue to influence present-day legislation and the possibilities that exist for different groups of people to be heard and to effect change.

Movements are built on local grievances but are also influenced by outside events. Place-specific contexts are interrelated across regions, especially through the legislative centres in the state capitals and in Delhi. At times, certain actors have the ability to jump from one context to a completely different one, as was true in the Samatha case, where a national court was persuaded to protect local land rights. These openings across India's

fragmented federal framework represent great sources of hope for improvement, while simultaneously creating fractures when only certain actors are able to operate across scales to bring about change.

This chapter presents a historical overview of land struggles in Adivasi India, with a specific focus on Andhra Pradesh. It shows how centuries of unrest over land relations have been crucial in shaping the present-day social movements protesting against bauxite mining. And it provides a deeper consideration of the Samatha judgment itself, which initially appeared to protect all the Adivasis of central India from dispossession.

## Past and Present Adivasi Land Uses

The history of land relations in tribal Andhra Pradesh, as well as in much of the rest of tribal central India, is one of recurring struggles against the transfer of farmland in the valleys to non-tribal farmers and moneylenders, and against the government's claim to own forest land on and around the hills (Balagopal 2007a). Successive efforts have been made by state governments to strengthen tribal legal rights to agricultural land in the valleys, especially as part of attempts to restore peace after rebellions, but state governments have retained control of forest land, leaving many tribals living under insecure circumstances for generations. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006* (otherwise known as the Forest Rights Act) provided some hope for change in favour of forest-dwelling communities, many of which are tribal communities.<sup>1</sup> Yet threats of dispossession by development projects, including dams and mines, have become common in the last 50–60 years.

A special legislative area with strong land rights, still today widely known as 'the Agency', was created in the northern part of Andhra Pradesh as a result of recurrent struggles against externally driven resource exploitation (see Figure 1.1). This process had three distinct moments: the creation of the area as a separate administrative region by the British colonial government in 1839; the declaration of state ownership of all forested land in 1882; and the reservation of private agricultural land for tribal farmers in 1917.

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1 According to one estimate, about 10.7 million people, or 14 per cent of the total population, in the former state of Andhra Pradesh (prior to the separation of the new state of Telangana) live in forested landscapes (Reddy et al. 2010).

Land on the plains, beyond the boundaries of the Agency, was formally titled in the early 1800s under local intermediary landlords, known as zamindars, who collected revenue on behalf of the colonial government. The zamindars, often minor chieftains who had inherited their titles, had great powers within the territories assigned to them, but could be evicted if they did not perform according to set criteria, especially if they did not pay the required taxes (Saxena 1997; Rao et al. 2006). Within the Agency itself, a distributed system of authority developed through the appointment of local hill zamindars, known as muttadars, who in turn were subordinate to the bigger zamindars on the plains.

The muttadars were the vital links in an extended chain of authority and subordination stretching from the villagers in the hills to a raja in the plains and hence, far more hazily, to a distant suzerain in Hyderabad, Delhi or Madras (Arnold and Guha 1995: 101).

Baken describes the establishment of land tenures around the city of Vijayawada in Krishna District, south of the present Visakhapatnam District, during the 1840s as an arrangement that built on earlier patterns of ownership and use:

[T]he land revenue arrangements prevailing in [the 1840s in] Vijayawada were a continuation of old local traditions in which specific (land owning) caste groups in each village had the exclusive right to the possession and yield of the soil, in return for paying taxes (Baken 2003: 121).

Not only were upper- and middle-caste groups able to command large areas of land; the quality of their land, including access to water sources, also tended to be better than that held by members of lower castes (Hjejle 1988).

The former (and larger) Visakhapatnam District,<sup>2</sup> on the very outskirts of British colonial rule, on the border between the Madras and Bengal presidencies, proved to be a difficult area to control, despite the use of zamindars as intermediaries, and there were frequent violent rebellions, especially in the hills (Arnold 1984; Atluri 1984). Without strategic importance or enough (known) resources to warrant the despatch

2 Visakhapatnam District under the Madras Presidency of British India comprised what today are the Visakhapatnam, Srikakulam and Vizianagaram districts of Andhra Pradesh, as well as parts of southern Odisha (see Figure 1.1).

of sufficient troops to control the situation, the solution adopted in 1839 was to set aside seven-eighths of the district's area from the normal rule of law through the creation of the so-called Agency.<sup>3</sup>

The provisions for the Agency included special courts of law and the ability to exclude or modify existing laws not deemed appropriate for the area. Significant powers came to be held by the District Collector who was the 'Agent' of the British Government—hence the continued reference to 'the Agency' in coastal Andhra Pradesh (Carmichael 1869). It was, in a sense, a practical solution for the colonial power to strengthen its local authority while removing some of the demands on hill zamindars to produce the same amounts of revenue as other zamindars in exchange for the return of peace in the hills.

Despite this, the rebellions continued, and even became worse after passage of the *Madras Forest Act 1882*, which put ownership of most Agency land in the hands of the government as 'reserved forest'. This included all land not under continuous cultivation but subject to the practice of shifting cultivation, known locally as *podu* (Saxena 1997; Rao et al. 2006). Another device was to declare land on hill slopes to be unsuitable for agriculture.<sup>4</sup> In the hilly Visakhapatnam Agency, this process ensured that most of the land came to be vested in the government, leaving only the flatter valley land to be recognised as private land. For these reasons, the forest dwellers, hunter-gatherers and subsistence farmers of the Agency were rarely included in any formal system of property rights, and this situation has continued to the present day (Balagopal 2007a).

Arnold (1984) argues that the nature of the rebellions showed that the grievances of the people were longstanding and served to unite the many different groups of people who inhabited the area, often including the locally influential muttadars, against the outsiders. This does not mean that the distinction between 'tribal' and 'non-tribal' identities was particularly important in such movements. Some of the best known rebel

3 This was done by means of the *Ganjam and Vizagapatam Act 1839*. Similar areas had been excluded in other parts of British-ruled India, including the Chota Nagpur area in present-day Jharkhand in 1833 (Maharatna 2005), and in the Godavari and Ganjam agencies in what is now Andhra Pradesh. The special Meriah Agency was carved out of the Visakhapatnam Agency in what is today southern Odisha in order to deal specifically with the perceived problem of human sacrifice among the Kondh people (see Padel 2009).

4 A 10 per cent slope was used as a relevant measure in parts of Odisha, which has a similar land settlement history (Kumar et al. 2005).

leaders were non-tribals, such as the Hindu Alluri Sitarama Raju, from the Kshatriya caste, who led the 1922–24 uprising against the restrictions on *podu* and on access to forests.

The result of a century or more of frequent unrest influenced the first legal protection granted to private land in the Agency. The *Agency Tracts Interest and Land Transfer Act 1917*, also emanating from the Madras Presidency, attempted to regulate land transfers, but also to limit the prevalence of usurious interest rates that indirectly led to land loss when farmers were not able to repay their loans. Specifically, no land was allowed to be transferred from a person belonging to a so-called ‘hill tribe’ to an outsider. It was, however, possible for the Agent to grant an exemption from this rule, so the land alienation could continue (Sastry 2006).

Subsequent legislation created further restrictions on land transfer, culminating in the passage of the *Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959* (hereafter called the ‘Land Transfer Regulation’). The seeming incapacity of such legislation to resolve the issues was indicated by amendments to this regulation that were made in 1970 after the outbreak of a rebellion in Srikakulam District (Reddy 1977). Again, violent protest had erupted in the hills over restrictions on forest use imposed by the government, but it was also partly due to limited implementation of the 1959 regulation and the prevalence of low wages in the region that it covered (Dasgupta 1973).

The Land Transfer Regulation, as it currently stands, completely prohibits the transfer of any type of land to anyone but an Adivasi person or a registered Adivasi cooperative society. This crucially includes forest land owned by the government. The law further presumes that all land in the state’s Scheduled Areas originally belonged to a tribal person, which means that land found in the possession of a non-tribal person should be restored to the original owner. Nominal tribal landholdings in which the real beneficiary is a non-tribal person, which are known as *benami* titles, are also prohibited (Balagopal 2007a). However, the regulation does not attempt to resolve issues related to ownership of, and access to, forest land. Nor does it propose a solution for the problems of the rural but non-tribal poor, who outnumber the tribal population in some parts of the Scheduled Areas.

In comparison to the exhaustive provisions of the Land Transfer Regulation, the Fifth Schedule of the Indian Constitution, the second legal precedent cited in the Samatha judgment, makes far less distinctive provisions for the protection of land rights. Instead, it leaves specific regulations to be determined by each state government or governor through repeated use of the word 'may'. For example:

The Governor may make regulations for the peace and good government of any area in a state which is for the time being a Scheduled Area ... such regulations may ... prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area (India 2007a: 288).

So it is not surprising that interpretations of the constitutional mandate to protect Adivasi landholdings have been highly variable.

Ever since the first land transfer legislation in Andhra Pradesh, the only amendments that have been enacted have been meant to further strengthen land rights. Civil society protest and electoral pressure on politicians has so far prevented open market reform of tribal land tenure in the state (Reddy 1988; Balagopal 2007a). Across tribal India, as far as is known, not a single land transfer act has been repealed, or even weakened, despite repeated attempts, such as those made in Jharkhand (Rao 2003; Kumar et al. 2005; Vijay Murty and Saran 2016) and also in Odisha. The continued formal strength of tribal land rights is quite remarkable, given the marginalised position of tribal people and the ongoing process of economic reform.

It might be possible to see the continued existence of land transfer legislation alongside the government's intent on promoting industrialisation as the result of the wide legal and administrative loopholes that exist in its implementation (Rao et al. 2006).<sup>5</sup> One example of this is that, if a non-tribal farmer gained possession of land before 1959, or with the consent of the Collector prior to the 1970 amendment, this land is allowed to stay in his or her possession. The most common loophole, however, is failure to act on the many surveys and reports that over the years have identified

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5 An especially high incidence of farmland held by non-tribals is reported for the new Telangana State, with more than 50 per cent land being alienated, as compared to Vizianagaram and Srikakulam Districts, with 0.2 per cent and 2.2 per cent of land respectively in non-tribal holdings. Land alienation data is not reported for Visakhapatnam District, but more than 9,000 hectares of non-tribal landholdings were detected in a 1997 survey of the district (Rao et al. 2006).

particular non-tribal landholdings across the Scheduled Areas of Andhra Pradesh. Administrative inaction and long drawn out court procedures have prevented the settlement of many land issues (Balagopal 2007a).

At the time of Independence, the Agency areas were incorporated into India's collection of Scheduled Areas.<sup>6</sup> But the process of settling its borders excluded many of those it was meant to protect. The Srungavarapukota (S. Kota) Mandal, a sub-division of present-day Vizianagaram District,<sup>7</sup> was one such area that was declared to be 'non-scheduled', despite a history of being part of the larger colonial Visakhapatnam Agency and having traditionally been a forested area inhabited by tribal groups.<sup>8</sup> The way the Agency border was drawn proved absolutely crucial for possible locations of the alumina refinery and for the people it would displace, since private industry has not been allowed in the Scheduled Areas after the Samatha judgment.

At the non-scheduled refinery site, several tribal villages were among those most severely affected by land acquisition in an area that had been excluded from the tribal land rights legislation (see Chapter 4). Campaigns have been running since the 1970s to include 796 tribal villages across Andhra Pradesh, with a combined population of 140,186 according to the 1981 census, within the Scheduled Areas. The number of non-scheduled tribal villages is especially large in the coastal districts, with 170 villages and 45,149 people in Vizianagaram District, and 33,939 people in neighbouring Srikakulam (Ajay Kumar n.d.). However, despite official recognition of the problem, there seems to be no scheduled status forthcoming for the land in question. Indeed, most of it is likely to have already fallen into non-tribal hands.

6 A clear definition of the extent of the Visakhapatnam Agency is difficult to find despite its importance for Scheduled Area governance. A practical definition would be the area in which the Andhra Pradesh Government's Integrated Tribal Development Agency operates, that is to say, the mandals (or sub-divisions) known as Ananthagiri, Araku Valley, Dumbbriguda, Hukumpeta, Pedabayalu, Munchingiputtu, Paderu, G. Madugula, Chintapalli, G.K. Veedhi and Koyyuru. The non-tribal part of Visakhapatnam then becomes the remaining 32 mandals of the district, but given the larger size of the mandals in the Agency, this would mean that the latter makes up roughly 56 per cent of the total geographical area (Gopal 1996).

7 A mandal is also known as a 'block' or *tehsil* in other parts of India.

8 It is possible that S. Kota Mandal was already excluded from the Agency in 1863 when, according to Carmichael (1869), the Vizianagaram and Bobbili zamindars were moved into the regular area of the Madras Presidency.

## Land and Adivasi Culture

The early history of the Agency thus revolved around rebellions in defence of material resources like land and forests. However, to fully understand the enduring support for special land provisions, it is not enough to merely examine the history of these material struggles. The discourse around tribal people and the impact of modernity upon them started to change in the late nineteenth and early twentieth centuries towards a view of the people as ecologically benign and therefore virtually guaranteed not to be able to cope with social and economic change. It is this representation of tribal people as having a special relationship with their natural surroundings that continues to reinforce the protection of tribal land, just as much as their direct livelihood needs as farmers or forest dwellers. The appeal of 'the tribal' has been remarkably durable despite India's changing economic priorities.

This modified view of tribal people, which came to be widely accepted from the early years of the twentieth century, was most clearly articulated by Verrier Elwin, a British missionary who arrived in the late colonial period and, after many years living in central India, became an authority on tribal issues, even to the point where he was appointed as an adviser to the Government of India (Guha 1996). In sum, Elwin argued that the tribal person was as much culturally as economically tied to his or her natural surroundings, and that tribal society was based on a special kind of unity and solidarity, with significant elements of fraternity and equality, and with a much higher status afforded to women when compared to the rest of India. Elwin's characterisation of the tribes thus positioned them against Western modernity as well as the traditionally rigid and unequal Hindu caste society. According to him, 'it was only the tribal isolated in the highlands who really lived; his religion characteristic and alive, his social organisation unimpaired, his traditions of art and dance unbroken, his mythology still vital' (Guha 1996: 2378–9). From this characterisation came the demand to protect tribals by upholding the sanctity of the separate areas created by the British, wherein they would remain free from the influence of modernisation as well as of Hindu caste society.

On closer examination, however, the division between tribal and non-tribal peoples that is maintained in national policy is not quite so clear-cut. At least in central India,<sup>9</sup> the 'tribal' social category comprises a wide range of peoples living across a number of different states, some of whom have their own religion, language or other customs that separate them from 'mainstream' India, while others do not, or else have adopted a religion, language or customs that resemble those of other, 'non-tribal' social groups (Xaxa 1999; Roy Burman 2003). To find a common denominator between all these groups of people is not a straightforward task, and most probably never was so in the past (Guha 1999).

The designation of Adivasi is increasingly used to build a claim for recognition as 'indigenous' people, yet it is doubtful whether the groups now officially categorised as Scheduled Tribes can claim to be more 'native' to India than other populations, such as the Dravidians of southern India (Xaxa 1999). In addition, many 'tribal' groups have migrated to their present locations from elsewhere, which makes it difficult to claim that they are the original inhabitants of the places where they now live (Guha 1996; Prasad 2003).

The supposedly egalitarian nature of Adivasi society does not seem to be supported by evidence from within the Agency that shows some striking resemblances to the caste divisions that exist on the plains. The traditional social order of the Agency has maintained the status of members of the Bagatha tribe as the main landowners, with the Valmiki tribe having a status similar to that of low-caste Hindu Dalits, with virtually no land of their own (Rajpramukh and Palkumar 2005). Similar divisions have been shown to exist between different sub-tribes (Reddy 1971). There is evidence of more freedom for women, in the form of higher female work participation rates, but this has not entailed a greater inclusion of women in decision-making forums or even in access to education, where tribal women still lag far behind men (India 2001a, 2001b).

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9 The Scheduled Tribes of the Sixth Schedule states of northeastern India are not discussed in this book because of significant differences in their cultures, as well as the legal framework, when compared to central India.



Figure 2.1 Adivasi village with bauxite hill in Araku Mandal.

Source: Photo by author, June 2012.

Perhaps the most distinctive feature of the 'tribal' category is instead the high incidence of poverty, or low levels of human development, that continue to plague the people within it (Kapur Mehta and Shah 2003; Gang et al. 2008). Despite its relatively strong overall record of poverty reduction, Andhra Pradesh is still worse off in comparison to other states with large Adivasi populations.<sup>10</sup> Other indicators of their intense poverty are evident in the high incidence of malnutrition and disease.<sup>11</sup> Nationally, Adivasis continue to be significantly worse off compared to India's other disadvantaged communities, such as Dalits and Muslims (Guha 2007).

10 As recently as 1990, the tribal literacy rate was as low as 7.7 per cent in the Visakhapatnam Agency, with a female rate of only 1.8 per cent (Gopal 1996). By 2001, 37 per cent of tribals were recorded as being literate, with a female rate of 26 per cent. Only Uttar Pradesh and Bihar have lower tribal literacy rates than Andhra Pradesh. By comparison, the Dalit literacy rate in Andhra Pradesh was 60.5 per cent in the same year (India 2001a, 2001b).

11 The infant mortality rate is between 120 and 150, compared to 72 for the whole of Andhra Pradesh. There is a 30 per cent mortality rate for under-5s, but for some tribal groups (like Savara and Gadaba) it is over 50 per cent. The incidence of tuberculosis is twice as high in the tribal population, and 75 per cent of all cases of malaria in the state are recorded in tribal areas (Reddy et al. 2006); 65 per cent of children aged 1–5 suffer from malnutrition, and only about half of all households consume adequate amounts of protein and energy, according to a survey conducted in the Khammam District of the new state of Telangana (Laxmaiah et al. 2007).

The Indian Constitution has recognised close to 650 different groups as Scheduled Tribes. These are not identified as 'indigenous' groups, but rather as being historically disadvantaged and in need of state support, like the Dalits. Extensive welfare programs have thus been designed specifically for these tribal groups and, like the Dalits, they have been allocated quotas in educational facilities and government jobs and reserved seats in elections to bodies that range from local councils all the way to the national parliament. Combined with state-level support for Adivasi land rights and other forms of protection, the legislative framework is significant on paper and continues to evolve.

The enduring representation of Adivasis as 'noble savages' in much academic writing owes something to the critique of modernity in post-development theory and to the women-in-environment literature (e.g. Shiva 1988; Escobar 1995). Examples of this representation can also be found amongst those working to protect Adivasis from mining incursions (e.g. Padel and Das 2010). However, this view has been exposed to criticism for resting on a form of deterministic romanticism that presupposes the natural ability of these people to take care of the environment and live sustainably (Guha 1999; Prasad 2003). The tribal category, and the more popular term Adivasi, is here understood as one that was originally imposed on a wide range of hill peoples. Nowadays, tribal people might be seen as a collection of people who are not necessarily 'indigenous', or even originally related to one another, but have a shared experience of marginalisation and relative isolation that has shaped their identities over past centuries (Xaxa 1999).

The overwhelming majority of the 5 million Adivasis in Andhra Pradesh and Telangana live in the northern hilly parts bordering India's main central-eastern Adivasi region. The 14 officially recognised groups of the Visakhapatnam Agency live in the southern end of the Eastern Ghats hill range, at the junction between the Gondi-speaking peoples, who migrated there from the west, and Kui-speaking Kondhs to the north. In addition, there are a number of native Telugu-speaking communities like the Kondha Reddy, who possibly migrated from the Andhra Pradesh plains (Arnold 1984; Pingle and von Führer-Haimendorf 1998). With such a diversity of peoples, it is perhaps not surprising that it has been difficult to gather support for local movements with a unified Adivasi identity.

Nevertheless, based on both material and cultural values, strong support continues to exist amongst tribal peoples themselves, as well as from sections of civil society and the state, for continued protection of land rights. Ownership of agricultural land and access to forests are both seen as important elements of social justice. The *Forest Rights Act 2006* is the most recent example of the way in which the image of the tribal as a caretaker of the environment is still very much alive, including among policymakers. As expressed in the Government of India's Bhuria Committee report on local decision-making in the Scheduled Areas:

Tribal life and economy, in the not too distant past, bore a harmonious relationship with nature and its endowment. It was an example of sustainable development. But with the influx of outside population, it suffered grievous blows (India 1995: 1).

## Social Movements and Bauxite Mining in Central India

One way to understand the changes brought about by mining is to examine the forms of social movement, and other forms of resistance, that it has created. These can be divided by between those concerned with *exploitation* (mainly of labour) and those concerned with *dispossession* (of people living above or near the mineral resources) (Bebbington et al. 2008). Strong labour movements have historically been built around the first set of concerns, where the key issue has been working conditions, but in more recent years, new movements have been created around the issue of dispossession, as modern industries have tended to employ fewer people and have moved into remote geographical areas where local people may have little hope of gaining employment from industrialisation. Concerns over dispossession have come to embrace:

- *land use changes*, including the extent of the land required for mining and the compensation paid for it, but also the effects of pollution;
- *social changes* imposed on previously coherent communities; and
- *resistance to people perceived as outsiders*, who remove valuable resources from the local population instead of providing them with a greater share of royalties or other forms of income.

Protests against bauxite mining in India have tended to focus on land use changes, with the aim of protecting local peoples from dispossession, mainly by preventing their displacement and pollution of the environment. Such protests have demanded the abandonment of mining plans in areas where the ensuing changes will be too great for the local people to cope with (Ramamurthy 1995; Reddy 2006; Amnesty International 2010; Padel and Das 2010; Patra and Murthy n.d.). In some cases, a demand for environmental conservation has also played an important role in these protests (Mishra 1987; Oskarsson 2013b). Alumina refineries, on the other hand, like other industrial facilities, have tended to create resistance because of their use of agricultural land and the poor employment and compensation benefits provided to farmers, with less concern about environmental conservation. In both cases, the option of demanding better business practices, remunerative employment and a local share of the profits has been eschewed in favour of an oppositional path of resistance to dispossession.

The reasons for the strong opposition to dispossession are not hard to fathom. Though exact numbers are not available, it seems clear that mining is the biggest source of displacement in India after dams, with victims potentially numbered in millions. Very few of them have been resettled, and the problem has been especially acute for those displaced by mining. Even when a program of resettlement has been agreed, the implementation of land-for-land compensation policies has proved to be impossible. One important explanation for the lack of compensation, let alone full rehabilitation, is the strong connection of mining to forest land owned by the government. For tribal peoples, the denial of rights over forests has meant the denial of compensation when a tract of forest has been converted into a mine (Fernandes 2009). The denial of compensation for land also means a denial of other potential forms of compensation—jobs or education—that could help people to rebuild their livelihoods. The development of industrial facilities tends to take place on flatter stretches of land with more formally recognised ownership rights. However, this has not prevented controversy over the acquisition of this type of land, which is often seen to involve a choice between livelihoods and food security, on one hand, and industrialisation, with manufacturing jobs, on the other (Fernandes 2007).

Concern over the social changes brought about by mining has occasionally been voiced in India, but has so far found little high-level policy support, despite the fact that many mining operations taking place in the

Scheduled Areas. Acts of resistance to the appropriation of the benefits by outsiders, which have been a common theme in the international representation of resource struggles involving indigenous peoples, have received remarkably little attention in India. Even when state governments have presented arguments to the national government for higher levels of compensation from mining, local tribal movements have seemingly refrained from making claims to mineral resources as a collective right. The greater threat of dispossession has apparently precluded attempts to secure greater local benefits from mining, despite the opening made for tribal cooperative mining in the Samatha judgment.

Large-scale aluminium production started under British rule in 1943, when Indal, a subsidiary of the Canadian firm Alcan, started operating in Kerala, with access to both bauxite ore and hydropower for smelting. A number of joint ventures followed, on a relatively small scale, but the discovery of larger bauxite deposits in other parts of the world made the Indian operations uncompetitive. Efforts to expand the industry came much later, in the form of a joint venture between the Hungarian and Indian governments, known as Balco (Bharat Aluminium Corporation), in the present-day state of Chhattisgarh in 1965. However, technological problems prevented Balco from operating properly for many years, and when these problems were finally overcome, the ore reserves turned out to be insufficient.

The Indian aluminium industry would probably have remained in this semi-dormant state had it not been for the discovery of the east coast bauxite reserves in the mid-1970s. Despite the conduct of surveys by British and Indian geologists for well over a century, these deposits, in parts of the Scheduled Areas of southern and western Odisha and northern Andhra Pradesh, had not previously been detected (Rao and Ramam 1979). The Nalco (National Aluminium Corporation) bauxite mine and alumina refinery complex was opened in southern Odisha, in cooperation with the French firm Pechiney, and with financial support from the French Government, in 1987. A few years later, an aluminium smelter was constructed in Angul, in northern Odisha, close to the coal mines that would provide its source of power. Nalco remains the by far largest bauxite miner in India, and the only one that is currently exploiting the vast bauxite deposits of the Eastern Ghats.

The Indian bauxite industry's first encounter with protest movements occurred in the late 1980s, when Balco's search for additional ore reserves brought it to Mt Gandhamardhan in western Odisha (Mishra 1987). This mountain is known for its biodiversity but also as a destination for Hindu pilgrims. A significant opposition movement was established when local and national activists objected to the company's statement that 'Gandhamardhan will truly come of age with old holy temples of Nrusinghanath and Harishanker and modern industrial temples co-existing and enriching each other' (Concerned Scholars n.d.: 2). In the end, it was mainly the mobilisation of local livelihood concerns that forced the company to abandon its plans, at a time when protests against displacement, especially by dam construction, were growing across India. The difference between the widespread protests against dams and those against bauxite mining at Gandhamardhan and other locations is that the latter have been less concerned with direct displacement, with a greater focus on the indirect loss of livelihoods from the disturbance of water and forest resources. In addition, the proposed bauxite mining areas have often had environmental values that justify conservation. These concerns, which have been voiced with growing strength since the late 1980s, have largely been ignored by the promoters of mining projects.

Aside from the Gandhamardhan protest, the late 1980s and early 1990s were relatively quiet years, in which there was little government support or private capacity for further expansion of the mining industry. The lack of interest or capacity is evident in the Andhra Pradesh five-year plan for 1992–97, which merely suggested a start to 'preliminary studies for exploitation of the Araku group of bauxite deposits for which no other government agency has expressed interest' (Andhra Pradesh 1991: 39). The bigger deposits of the northwestern part of the current Visakhapatnam District were not even mentioned as a topic worthy of study, presumably due to security issues in areas that were virtually under the control of the Naxalite 'Peoples' War' group.

The interest in developing the east coast bauxite deposits increased dramatically in the 1990s after the Indian economy was opened to private investment in export industries. These changes coincided with the start of a period of higher mineral commodity prices in world markets and the loosening of control over refining and smelting technologies by a handful of Western companies, which allowed these technologies to be purchased on the open market. Among the first attempts to exploit these new opportunities was the Utkal Alumina project at Kashipur in Odisha in the early 1990s (see Figure 1.1). However, the experience of the nearby Nalco mine and

refinery fostered strong resistance that evolved into possibly the longest running protest movement against any form of industrial development in the state of Odisha, which culminated in the police shooting of three protesters in 2000. These and other human rights violations have been extensively documented but are still largely unresolved (PUDP 2005; Reddy 2006; Goodland 2007; Padel and Das 2007). While the ongoing protests caused the withdrawal of international investors Hydro (from Norway) and Alcan (from Canada), and even the Indian Tata Group, the project has continued, and is now wholly owned by Hindalco (part of the Birla Group), which is proposing to expand the operation.

Bauxite projects in Andhra Pradesh have remained secondary to those in Odisha, partly because the former has smaller deposits and more difficult terrain, but also because of the failure of attempts to establish a local industry with Soviet support in the early 1980s (Srinivasan et al. 1981).<sup>12</sup> It was not until 1999 that the Government of Andhra Pradesh, together with an unnamed Dubai partner, made another attempt to exploit its bauxite deposits, but these plans made little progress before they were dropped in 2003 as a result of civil society pressure based on the Samatha judgment's ruling against private mining on tribal land (Prasad 2000; Ganjivarapu 2007).

Privatisation and restructuring has concentrated the Indian aluminium industry in the hands of three companies: Nalco, Hindalco and Vedanta. Vedanta Resources, registered in the United Kingdom but with its main operations in India, is a relatively late entrant to the aluminium industry. It quickly grew to become a major player through the purchase of two former state-owned companies, Balco in Chhattisgarh and Madras Aluminium Company in Tamil Nadu, while also attempting to establish some new projects of its own, especially in Odisha.

Vedanta's Balco compound in Chhattisgarh was large enough to accommodate an entirely new aluminium smelter with a dedicated coal-based power plant, so the old Hungarian and the new Chinese-built smelter continue to operate on the same site. For its part, Nalco is doing very well financially, but as its various attempts to create new facilities in India have failed at the planning stage, apparently for political rather than technical or economic reasons, it has been forced to look abroad.

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12 These attempts were finally abandoned with the subsequent demise of the Soviet Union.

Hindalco appears to have started mining on a small scale in Kashipur, in close collaboration with the state-owned Odisha Mining Corporation, to supply raw material for its Utkal refinery.

The key test case for this new wave of expansion has been Vedanta's plan to follow a similar course of action to supply its Lanjigarh refinery in the same part of Odisha (see Figure 1.1). In 2003, three activists filed a case in the Supreme Court of India alleging that the company was making illegal use of forest land. After long deliberations, the mine was controversially allowed to proceed in August 2008 (India 2008a), but local protests continued, supported by national and international campaigns (India, 2007b; Norway 2007; Amnesty International 2010, 2011). In 2010, the mine failed to secure an operating licence from the Ministry of Environment and Forests (MoEF), but this merely led to a new round of litigation and appeals to the MoEF's 'expert committee'. With no resolution in sight, Vedanta seems to have undertaken a six-fold expansion of its refining capacity, despite not having the required regulatory approvals (Orissa 2011) and without a local supply of raw material.

This case has received so much publicity, both nationally and internationally, that it is not easy to envision any form of resolution to the conflict. The expansion of social media networks in recent years has ensured that the issue is kept alive, including by means of 'annual global days of action' against Vedanta that coincide with the company's annual general meetings in London (Foil Vedanta 2015). Any attempts at resolution on the part of state actors thus risk being seen either as disincentives for the investors who count as key figures in the 'new economy' or as attacks on the human rights of marginalised groups.

Unfortunately, Indian governments were unable to learn from mistakes already made during the long-running controversy over bauxite mining when they allowed AnRak Aluminium to build a refinery in Andhra Pradesh without having first secured their ore supplies, thus replicating the establishment of Vedanta's refinery without a mine in Odisha. It was therefore predictable that Adivasi rights activists would protest against mining in the hills while investors had predicated construction of a refinery on access to ore that cannot easily be sourced from elsewhere (Oskarsson 2012). The AnRak Aluminium investment, just like the Jindal South West (JSW) project that is the focus of this book, had to contend with the Samatha judgment's ban on private ownership or lease of land for mining in the Adivasi areas. While this has led companies to rely on state governments to provide them with

access to mineral resources, it has also created a susceptibility for future legal challenges in any case where resources from Adivasi areas look as if they are being used for private rather than public benefit.

## The Samatha Case

The Samatha Supreme Court case in 1997, crucial to the controversies examined in this book, is perhaps best seen as one of the final cases of success during India's phase of public interest litigation that started in the mid-1980s. Only a few years after the Samatha judgment, a claim for rehabilitation of people affected by the Sardar Sarovar dam was decided in favour of the industrialists, and the trend has not been reversed to date. There have been a few positive court verdicts for activist plaintiffs since then, but certainly fewer than in the past. While legal activism remains a popular option for social movements, it is not the main tactic that it once was (Epp 1998; Gustavsson et al. 2013).

Shortly before Samatha brought its case to the courts, an organisation called Sakti ('Power'), with similar goals, had been litigating against mining companies in the same hills, close to Visakhapatnam, based on similar breaches in the protection of Adivasi land rights. Sakti won this case because the companies were deemed by the court to be 'non-tribal' and therefore ineligible to own or lease the land. The judges in Samatha's initial High Court case were somehow not aware of the earlier judgment, so when Samatha lost this case in 1995 there was no other option but to appeal to the Supreme Court through public interest litigation involving the Government of Andhra Pradesh as well as the companies. This was a crucial difference because the government was supposed to operate in the public interest, including the interests of tribal people, as well as to contribute to national economic development.

The court was well aware of the conflicting issues at stake.

The object of [the] Fifth and Sixth schedules to the Constitution . . . is not only to prevent acquisition, holding or disposal of the land in Scheduled Areas by the non-tribals from the tribals or alienation of such land among non-tribals inter se but also to ensure that the tribals remain in possession and enjoyment of the lands in Scheduled Areas for their economic empowerment, social status and [the] dignity of their person. Equally exploitation of mineral resources [for] national wealth undoubtedly, is for the development of the nation. The competing rights of tribals and the state are required to be adjusted without defeating [the] rights of either (India 1997).

According to Vagholikar and Moghe (2003: 69), the Samatha judgment itself can be summarised in three key points that apply specifically to the state of Andhra Pradesh:

1. State, forest and tribal private lands in the Scheduled Areas cannot be sold or leased out to non-tribal persons, including private industries, since this would contradict the Fifth Schedule of the Constitution and the Andhra Pradesh Scheduled Area Land Transfer Regulation.
2. Mining activities in the Scheduled Areas can only be undertaken by the Andhra Pradesh State Mineral Development Corporation or a tribal cooperative acting in compliance with the *Forest (Conservation) Act 1980* and the *Environment (Protection) Act 1986*.
3. At least 20 per cent of the net profits from such activities, aside from any mandatory environmental protection costs stipulated by other laws, are to be set aside in a permanent fund for the improvement of local education, health or other social services.

While the judgment provided improved protection from development-induced displacement in Andhra Pradesh, it came with some difficulties. Adivasis, unable to obtain employment in mining projects because of their lack of qualifications, are likely to face overwhelming obstacles to the exploitation of minerals through cooperatives in a manner that promotes an equitable distribution of the benefits. On the other hand, the decision to allow the government to do the mining was motivated in a fairly simplistic manner by the assumption that public corporations act in the public interest. The court thus took the view that the mineral resources had to be used for the benefit of the nation, despite the risk that the government would cause much the same problems for tribal people as would private companies. Indeed, the court did not even prescribe any particular measures to ensure that state-owned mines would actually produce any public benefits.

The status of the 20 per cent of net profits that should be set aside for a local development fund is also uncertain. It is at present not known whether any company actually provides a share of its profits for this purpose in accordance with the judgment and, if so, who decides how it is spent. In Andhra Pradesh, this is particularly relevant in the case of the sizeable coal mining operation undertaken by Singareni Collieries, a subsidiary of the national state-owned company Coal India. Furthermore, since the judgment does not apply to other economic sectors, state-owned

enterprises in the forestry, agriculture or tourism sectors can continue to operate in the Scheduled Areas without having to provide such local benefits or to involve tribal people in their management beyond the requirements of existing reservation policies, and have so far tended to include Adivasis only at lower levels of employment, if indeed at all. Finally, the state still has the right to undertake large-scale projects for the greater benefit of 'society' by using the powerful *Land Acquisition Act 1894* and its various amendments up to 1998. The Samatha judgment does not say how the state's right of eminent domain should be applied in relation to tribal land protection, and the Andhra Pradesh Government has thus been able to move ahead with the enormous Polavaram dam, which is expected to dispossess and displace more than 200,000 people, most of them Adivasi, which is more than the number displaced by the controversial Sardar Sarovar dam in Gujarat.

The immediate reaction of the Government of Andhra Pradesh, as well as the national government, was to appeal the Samatha judgment to a larger bench of the Supreme Court, but the judgment was upheld in 2000 (India 2000a). Attempts were then made to remove the basis on which the judgment stood by amending either the Andhra Pradesh Land Transfer Regulation or the National Constitution (Balagopal 2007a). An internal brief from the national Ministry of Mines took the latter path:<sup>13</sup>

The impasse created by the Samatha Judgment can perhaps be resolved only through an amendment of the Fifth Schedule to the Constitution as opined by Attorney General. One way could be to add the following explanation ... The regulations framed under paragraph 5(2) shall not prohibit or restrict the transfer of land by members of the Scheduled Tribe to the government or allotment by government of its land to a non-tribal for undertaking any non-agricultural operations including reconnaissance or prospecting or mining operations under the provisions of *MMDR Act 1957 [Mines and Mineral (Development & Regulation) Act, 1957]* (India 2000b: para. 18).

The central government's Planning Commission was also worried about what the judgment would mean for future mining operations, warning that it would be 'necessary to make ... amendments to overcome the hurdle placed in the way of private mining in notified tribal areas by the Samatha Judgment' (India 2001c: 44).

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13 The briefing note was widely disseminated in the Indian press (e.g. Mitta 2000).

The national government's plans for constitutional change bear witness to the powerful interests working to open up the Scheduled Areas to private economic activity. Nevertheless, high-level voices in favour of the Samatha judgment were also articulated. President K.R. Narayanan's Address to the Nation on Republic Day, 25 January 2001, included the following observation:

In eastern India, the exploitation of minerals like bauxite and iron ore are causing destruction of forests and sources of water. While the nation must benefit from the exploitation of these mineral resources, we will have also to take into consideration questions of environmental protection and the rights of tribals. Let it not be said by future generations that the Indian Republic has been built on the destruction of the green earth and the innocent tribals who have been living there for centuries (India 2001d).

The 'Campaign to Prevent Amendment to the Fifth Schedule', supported by civil society organisations across India, showed that it was possible to mobilise resistance both nationally and locally, within the state of Andhra Pradesh. The constitutional amendment was abandoned, and the final draft of the Tenth Five-Year Plan made a less controversial statement.

To enhance the indigenous mineral resources, intensive exploration is required. An enabling environment must be created to attract new investments through private sector participation with modern technical and managerial expertise for finding new deposits and develop them sustainably in the Tenth Plan (India 2002a: 742).

While the contestation over the interpretation, and possible implementation, of the Samatha judgment was still going on, a new case came to national attention as the Government of India sought to privatise Balco. If successful, this could be seen as a transfer of Scheduled Area land from the government to a private, non-tribal entity, and that is something that is also banned in the land transfer regulations of Chhattisgarh, where Balco operates. The trade union representing Balco's employees took the Government of India to the Supreme Court, again using public interest litigation, to challenge the sale on the grounds that it contravened the *Madhya Pradesh Land Revenue Code 1959*, which had been inherited by the new state of Chhattisgarh when it was formed in 2000. However, the court allowed the sale to proceed because '[t]he land was validly given to BALCO a number of years ago and ... even with the change in management the land remains with BALCO to whom it had been validly given on lease' (India 2001e). By stating that Balco was

still the same company, and thus the same user of land, even though it had been privatised, the judges managed to reach the conclusion that the case involved no transfer of land and was therefore consistent with existing legislation. The Balco judgment also restricted the application of the Samatha judgment by stating that the latter 'is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the ... Regulation of Andhra Pradesh' (India 2001e).<sup>14</sup>

Following the Samatha judgment, the Government of Odisha set up a special committee to review its potential implementation in that state. The stakes were even higher there than they were in Andhra Pradesh, since the local economy relies more heavily on mining and its tribal population accounts for a much larger share of the total population. In 2001, shortly after the Balco judgment was handed down, the committee concluded that the Samatha judgment did not apply in Odisha (Yadav 2003). The most senior government official, Chief Secretary P.K. Mohanty, was cited as saying that 'the law in Orissa is not the same [as in Andhra Pradesh], although it does ensure ample safeguards for tribals' (cited in Mohanty 2003).<sup>15</sup> No further legal challenges have been made in favour of tribal land rights, anywhere across the Fifth Schedule states of central India, since the Balco judgment. Balagopal (2007a) has argued that the National Constitution should be sufficient to prevent mining across all of the Scheduled Areas, but this possibility remains untested in a court of law.

Since the Samatha and Balco cases were settled, activists working on mining and Adivasi land rights across India have either eschewed legal activism or combined it with other strategies such as mass mobilisation, lobbying of decision-makers and media campaigns to affect public opinion. Attempting to get justice from the courts is risky at the best of times, and when the scope of a judgment like that made in the Samatha case has been dramatically reduced, a preference for other strategies reduces the risk of this judgment being overturned completely by a new set of judges.

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14 The question of how different the two laws actually were did not arise in the Balco judgment, nor did the validity of the provisions of the National Constitution, the second leg on which the Samatha judgment rested.

15 The laws cited in support were the *Orissa Scheduled Areas Transfer of Immovable Property (Scheduled Tribes) Regulation 1956* and the *Orissa Zilla Parishad (Amendment) Act 1997*.