

Muthanga: The Real Story

Adivasi Movement to Recover Land

The tragic events at Muthanga in Kerala earlier this year were a culmination of adivasi frustrations over the failure of successive governments in the state to restore adivasi land despite several judicial directives and the existence of laws enacted for the purpose, such as the KSA Act of 1975. Instead attempts were made to amend the act which was later wholly repealed. The protest of the adivasis at Muthanga met with brutal repression by the government. But chastened by the public anger at the police action, the government now remains immobilised in the face of a series of fresh land occupations by adivasis in the Kerala part of the Western Ghats. If the government were to handover the land in Muthanga to the adivasis and make other lands available to landless adivasi families and bring all adivasi regions under Schedule V of Article 244 which provides for participatory self-rule and autonomy, it would herald a new era in adivasi history.

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Minorities the world over are first discriminated against and then terrorised into submission. Kerala is no exception to the rule. With the shocking brutal attack on the adivasis in Muthanga in the Wayanad Wild Life Sanctuary that led to a tragic loss of lives on February 19, 2003, the simmering discontent amongst the adivasis of Kerala has reached flashpoint. Post-attack justifications have been pouring in fed mostly by the state with the active assistance of the leaders of the ruling and opposition parties. All of a sudden, links with the PWG of Andhra Pradesh and even the LTTE were conjured up and quite predictably, just as quickly, denied by the police as lacking in substance and evidence but not before they caught the attention of the media-alert masses of Kerala. The chief minister A K Antony, revealed that the adivasis had plans to take his ministers hostage; the hit-list later expanded to IAS and other officers as well as the foreigners who had come to Kerala to attend the recently concluded Global Investors Meet (GIM). A number of activist groups had protested vehemently then against the handing over of Kerala and its resources to global capital. The Muthanga incident and the attendant hype over it is now being conveniently tied up with these groups in a probable attempt at cleansing the state of them all. It is but natural that those who fight for their right over their resources and those who oppose the new global order and instead propose alternative (read socialist) economic paradigms are the newfound 'enemies' within. Such inconveniences are to be eschewed for a globalised dispensation.

The Muthanga attack jolted the people of Kerala out of their complacency with regard to the adivasis of Kerala. In a blatant flouting of all legal norms, the state failed to give any prior warning of the police action, nor was any attempt made towards a mediated negotiation. Though the government assiduously clings to a figure of two dead – one an adivasi, and the other a policeman, unconfirmed reports quote a much higher death toll. Quite a few of the adivasis including children are reported missing. Yet, the police having unleashed a reign of terror in the region – with the State Women's Commission feigning ignorance, it took the National Women's Commission to substantiate reports of physical molestation of adivasi women. Those who fell into the hands of the police were brutally manhandled en route to the police station;1 the 'Adivasi Gothra Maha Sabha' (AGMS) activists were forced to beat one another.2 C K Janu and M Geethanandan – were tortured mercilessly; K K Surendran, a lecturer, was also penalised for the simple fact that he was a known sympathiser of the adivasi cause. Despite an intense pressure campaign for a judicial inquiry from various quarters, including the opposition and the union minister for tribal affairs, Juel Oram, the Antony-led government had stolidly refused to comply. The onus it seemed rested with the National Human Rights Commission (NHRC) to whom the government had submitted its report on the incidents. Now that the NHRC has rejected the government stance, the state has been forced to seek an inquiry by the CBI. And this is precisely what the AGMS wants.

Arguments and justifications propping up the government stance abound – one such argument claims that the attack was on orders from T R Balu, the minister of environment and forests; another puts it down to a Supreme Court order to evict forest encroachers. The chief minister and the state were constrained to label as ‘anti-national’ the adivasis declaration of Muthanga as an area of ‘self-government’. In fact, Part IV of the Directive Principles of State Policy under Article 40 titled ‘Organisation of Village Panchayats’ reads thus – “The state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” It is on this very obnoxious ‘self-government’ clause that the 73rd and 74th Amendment on Panchayat Raj and Nagarpalika Acts as well as the Panchayat Raj (Extension to the Scheduled Areas) Act 1996 for Schedule V areas are built. If the adivasi insistence on this constitutional provision on ‘self-government’ is unacceptable to the government and political parties per se and the democratic right of adivasis to organise and protest is questioned (despite the fact that democratic protests too may well lead to unfortunate incidents of conflicts and clashes) then these smack of a vicious and dangerous discriminatory approach and practice.

It was on January 4, 2003, that the Adivasi Gothra Maha Sabha (the grand assembly of adivasis, AGMS) had entered the deforested portions of Muthanga and its vast eucalyptus plantations that have been successfully passed off as forest by a shrewd state and forest department. The number of adivasis had swollen to over 1,100 families since then. They had gone there in pursuance of their long-cherished dream of possessing land to survive on – a dream that now rested on the ‘agreement’ between Antony government and the Adivasi Dalit Samara Samithi (ADSS) headed by C K Janu and M Geethanandan on October 16, 2001. The ‘agreement’ categorically stipulated that land distribution would commence on January 1, 2002 and be completed on December 31, 2002. It was also agreed that a proposal based on the cabinet decision to include adivasi areas in the Schedule V would be sent to the centre for further notification. This was to enable the adivasis to enjoy the provisions of the Panchayat Raj (Extension to the Scheduled Areas) Act 1996 that provides for elements of self-governance. In addition, the government promised to abide by what ever would be the Supreme Court judgment regarding the 1975 Act.

The decision to move to Muthanga evolved out of widespread consultative process across the state’s adivasi belt. It was decided that the AGMS would go by the time-schedule that the government had drawn up for itself, after which it would be the bounden and solemn duty of AGMS to bring the agreement into effect. This participatory democratic process culminated in a huge gathering of thousands of adivasis from across the state at Mananthavady in Wayanad district on August 25, 2002 when a 60 member tribal court (consisting of 20 women and 40 men) representing different tribal communities was constituted. The tribal court declared once again that in view of the non-implementation of the ‘agreement’, the adivasis shall establish their rights by occupying the lands. It was thus that thousands of adivasis had moved into Muthanga on January 4, 2003 after the deadline prescribed by the government expired on December 31, 2002.³ It was in fact the culmination of the politics of laxity and deceit on the part of governments – both Left and Right – employed against ethnic minorities which constitute 1 per cent of the state’s population.

Dispossession of Land and Means of Survival

Around 30 per cent of the tribal households in the state are landless. Landlessness is lowest in the former princely state of Travancore and Cochin. The dominant tribes in these three districts, viz, Kanikkar (Thiruvananthapuram) the Mala Arayan (Idukki and Kottayam), Muduvan (Idukki) and the Urali (Idukki and Kottayam) were the first to become settled agriculturists. The proportion of landless tribal households is highest in the Malabar area, with the districts of Wayanad and Palakkad taking the lead. The Paniya and Adiya were traditionally slaves and had not owned any land in recent centuries. As a result of the large-scale influx of non-adivasis, particularly from the former Travancore state, a sizeable chunk of arable land, which the adivasis had used for shifting cultivation, have been encroached upon depriving them of their only means of subsistence. The post-second world war ‘grow more food’ campaign initiated by the government contributed considerably to this migration to the Malabar region. Extensive tracts of tribal land were surreptitiously acquired or usurped by cultivators who immigrated from the plains and the adivasis were reduced to the position of landless serfs of these Hindu, Christian and Muslim exploiters. The greatest suffering has naturally been inflicted on the Paniya and Adiya.

The 1975-76 data show that adivasi landless field labourers increased from 57 per cent to 61 per cent in the Wayanad region. Large number of Kurichian and Kuruman who were traditionally landholding tribes were dispossessed from the mid 19th century in the wake of expansion of a land market to the forest region. The Cholanaickan, the most primitive tribe in the state who led the life of cavemen in the Nilambur forests till the late 1970s (when they were first identified) have not taken to agriculture. In Attapady, the migration of plainsmen started in the 1950s. But within a span of 25 years, 20 per cent of the tribal households in the district have been rendered landless. According to the report, of the total area of tribal land alienated during the decade 1966-76, 44 per cent was in Palakkad. The incidence of land mortgage was also the highest in this district. The average area possessed per household was highest in the districts of the former Travancore and Cochin states and lowest in Malabar as also the proportion of cultivated area to the total area owned. As the successive waves of non-tribal immigrants pushed the adivasis to inferior lands, the proportion of cultivable land to the total area possessed progressively declined.

On the whole 62 per cent of the landholding tribal households in the state possessed less than two acres of land on an average. Cultivation being insufficient to meet the subsistence requirements of these households throughout the year, their dependence on wage-labour for supplementing household income is very high. About 29 per cent of the cultivating households belong to the small farmer's category, operating an average area between two and five acres. 91 per cent of the cultivating tribal households have to offer themselves, to varying degrees, in the labour market to supplement their income from self-cultivation. The proportion of households owning less than 50 cents of land is also higher in the Malabar region. Primitive subsistence agriculture of slash and burn type is no longer possible. Cultivation of coarse grains such as 'ragi', 'cholam' have given way to diversified agriculture with cash crops. Wayanad evolved under the stimulus provided by rice cultivation, which depended on slave labour, with the adivasis receiving payment in kind, usually, paddy. The wage rates obtained by the tribal workers are lower than the ruling wage rates for agricultural workers. The proportion of tribal workers increased from 43 per cent in 1961 to 72 per cent in 1976, a process of proletarianisation which continued unabated. Though slavery had been legally abolished in the Malabar region in 1838, it took another century and a half for it to be before slavery actually left Wayanad in 1976. While land was scarce, labour was in surplus. Non-availability of cultivable land and/or alternative employment opportunities compelled the adivasi labourers to turn back to their former non-adivasi employers for sustenance. Even a progressive legislation like the Kerala Land Reforms Act was manipulated to suit the interests of non-tribals; the latter would take tribal lands on short-term lease for cultivation and register themselves as 'tenants' with the authorities. Later on, they would claim and obtain 'pattas' to the lands, dispossessing the tribal owner who had become the 'landlord'.

Plantation monoculture has destroyed forests of these regions, serving economic interests, namely European based global capital and, later, Indian big capital.⁵ An elaborate and strong vested interest mafia-style, structured around the forest department operated both above board as well as under ground. Added to this the famed political will of progressive Kerala brings with it an efficient implementation of 'development projects', including social forestry and eco-tourism, adding further insult to injury as far as the tribal ethos, culture and welfare go. Once proud peoples, these tribals were subjugated and trampled upon. An official enquiry conducted by the state government on instructions from the Supreme Court confirmed the existence of bonded labour in Kerala. A large number of adivasi girls are in bondage, some within the state and some outside. Bonded labour exists in Wayanad and that too in the colonies where they were rehabilitated by the government as for example the Sugandhagiri Cardamom Project and Vattachira Collective Farm. Hydroelectric projects and dams such as those in Idukki, Chimmuni and Karapuzha have resulted in a swelling of the numbers of landless tribals. Wild life sanctuaries and national parks such as the Periyar and Wayanad sanctuaries, have all driven thousands of Adivasis from their hearths in a colonisation of the last few rich patches of forests which have been thrown open to tourism operators, both within and outside the state. With the breakdown of traditional livelihood patterns in the past few decades, the intricate traditional relationships amongst the various adivasi communities in their respective geographical niches have been collapsed or attenuated. Conflicts with the migrant population, both the earlier migrants as well as the newer ones, escalated as the livelihood resources of the original inhabitants are colonised by the state and the settlers. Sexual exploitation has been so intense that the issue of 'unwedded mothers' has become a permanent phenomenon.⁶ Mental illness, another strange phenomenon for the adivasis, also stalks them. In

this context, land in their traditional homelands has become the single most crucial element for the survival of these communities.

Perpetuating Injustice

The fact that the newly-born state of Kerala was first nurtured by a Communist government (1957-59) with land reforms, ought to have encouraged a fitting resolution to the problem of adivasi land alienation. But the Left government did precious little to this end. The Constitution of India demands legislative or executive measures for the reconstruction of unequal social order by corrective and distributive justice through the rule of law. Distributive justice (Article 46) also connotes the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in society. Similarly, Article 39(b) enjoins upon the state to frame its policy towards securing the ownership and control of the material resources of the community and so distributed as best to serve the common good.

Specifically Article 244 Clause (1) Schedule V makes it mandatory for the state to ensure (Para 5(2) of Schedule V) total prohibition of transfer of immovable property to any person other than to a tribe, for peace and proven good management of a tribal area and to protect possession, right, title and interests of the STs. The provisions under Schedule V of this clause are not only applicable to the administration and control of areas notified by the president of India as 'scheduled areas' but also to those notified as 'scheduled tribes in any state'. This is to be achieved by suitable legislations as well as by declaration of tribal majority areas as 'scheduled area' with provisions for certain degree of self-governance since the enactment of the Panchayat Raj (Extension to the Scheduled Areas) Act 1996. Though no tribal area in Kerala has been thus far been notified as a scheduled area, yet as all the STs of all the states come under the purview of this article, the state governments that have no scheduled area are also constitutionally bound to enact suitable legislation to protect land rights. Moreover, as early as 1960, the Dhebar Commission, the scheduled areas and schedule tribes commission appointed under Article 339 of the Constitution headed by U N Debar, recommended that all tribal land alienated since January 26, 1950 – the day the Constitution came into force – be returned to the original adivasi owners, but nothing came of it. Neither did the abolishing of tenancy in 1970 bring any change to the adivasis who merely lost more of their occupancy rights to the settlers who had now become their 'tenants'. Moreover, the adivasis who had already been uprooted from their lands were driven and dispersed farther afield in the wake of the decision to exempt plantations and religious institutions from ceiling provisions. Despite the fact that the Kerala Private Forest (Vesting and Assignment) Act of 1972 specified the exact areas – nearly 23,000 hectares – to be distributed to the landless adivasis, this, too, turned out to be yet another insipid piece of legislation.

The meeting of the state ministers on April 1, 1975 passed the resolution that "legislation for prevention of land alienation should be undertaken immediately. The work was to be done within six months. Of most significance were the legislative measures for the prevention of land alienation and restoration of alienated land. A crash programme for effectively implementing these laws within two years may be prepared in each state setting targets for each year, which should be periodically reviewed". Consequent upon this, the CPI-led Kerala government unanimously passed the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975 on November 14, 1975 as Act 31 of 1975 after procuring the mandatory assent from the president of India. This act (KST Act 1975) was further included in the Ninth Schedule of the Constitution to ensure that the act itself would not be challenged in any court of law. But it was only after a full decade in 1986 that the rules operationalising the Act was formulated.⁷ Under this act, all transactions of adivasi lands during the period 1960 to 1982 were to be held invalid and the lands restored to the original owners who would be required to pay a sum equal to the total of the amount received, if any, as consideration for the transaction and the amount spent by the occupier of the land before the commencement of the act, as compensation. The government would advance a sum as loan to the beneficiary, which was to be repaid in 20 years. Transfer of lands from tribal to non-tribals was also prohibited from 1982. The KST Act, 1975 and other similar acts in other states are the direct progeny of constitutional obligations. Despite the restriction, the transfer of lands continued unabated in rank violation of the act. Figures indicate that the number of landless families alone increased from 3,549 in 1976 to 22,491 in 2001 despite a ban on land transfer – a seven fold increase.⁸ The governments, almost alternately led by the Congress led UDF and the CPI(M) led LDF, did nothing to enforce its implementation. The act

and in effect the Constitution itself, has been thoroughly subverted by successive governments and their participant political parties.

As on April 4, 1991, the total number of applications for land restoration was 8,754 laying claim to a total of 9,909.4522 hectares. The number has since risen to 8,879. Of these, the maximum number of applications has come from the districts of Palakkad (2,523) mainly from the Attapady region and Wayanad (2,229) from the Nilgiri hill region though applications have been filed in from almost all the districts of Kerala. 463 applications were disposed and an area of 544.5602 hectares was restored leaving 8,291 applications for 9364.8920 hectares. Of these, over 3,000 applications have been rejected for want of adequate “documented or recorded” proof of ownership of land by adivasis almost as if it was the adivasis who were responsible for it. That leaves us with a paltry 7,640 acres to be claimed by 4,524 applicants. Their ignorance of the alien concept of ownership coupled with an insensitive and biased administrative machinery that trivialised the traditional rights of the adivasis contributed to a situation where the adivasis were left without valid proof of ownership or enjoyment. The government was loath to restore even the few bits of land that the adivasis could provide records for. Stray and insignificant instances of restoration, however, did occur sporadically.

In the two decades since the KST Act 1975 was passed, the ground reality too had changed. The political compulsion to appease and wean the adivasis away from the ‘Naxalites’ who were active during the earlier period when the act was passed, no longer existed. The mainstream political parties had established their presence amongst the adivasis under the organisational control of the immigrants. State repression and a fast expanding market for cash crops and the plantation economy, along with the fact that adivasi lands were held by powerful economic interests, together worked to weaken radical movements. The adivasis had meanwhile become a numerical minority in their homelands. For example, in Attapady, the adivasis who constituted 63 per cent of the population in 1961 had become 39 per cent by 1991. The political parties and the government did an about-turn from support of the act to a total opposition to it. This was on the pretext that the act itself was unjust to the ‘hard working’ migrants who had ‘developed’ the area economically and that the implementation of the act at this juncture could create a potentially dangerous conflict between the adivasis and non-adivasis. An all-pervasive apartheid mindset among the ‘enlightened’ and so-called politically conscious, largely middle class masses of Kerala has done nothing to ameliorate the adivasi predicament.

Legal Battle for Alienated Lands

Responding to the public interest litigation filed in the Kerala High Court by Nalla Thampi in 1988 to force the implementation of the 1975 Act, the high court issued a writ of mandamus on October 15, 1993 giving the government exactly six months time to dispose of the applications pending with it. The state found excuses to dodge implementation of the act every six months since, until in 1996, with elections round the corner, it promulgated an ordinance amending the 1975 Act. The governor refused approval on the ground that it was a violation of the election code.

The subsequent election brought the LDF to power following which it passed an ordinance similar to the previous one, but it again failed to get clearance from the governor. In August 1996, the government filed an affidavit with the high court professing its inability to implement the 1975 Act owing to “organised resistance” from the powerful settler-encroachers. But justice P K Balasubramanian of the high court issued a final directive in rejection of the government’s stand, demanding implementation of the act within six weeks, ending September 30, 1996. Faced with this deadline the government passed the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Amendment Bill, 1996 to avoid contempt of court proceedings. The amendment was grossly unjust. For instance, in Attapady, under the KST Act, there were claims for restoration of more than 10,000 acres of alienated land, but the authorities have ordered restoration of only 3,336.16 acres in 1,147 applications with 600 applications still kept pending. Actual restoration however has not taken place. With the proposed amendment, the government would have had to deal with only 29 cases of alienation involving just 41 acres. K R Gowri, the present minister for agriculture, whose lone voice was heard against the amendment, and who was also

actively involved in the October 2001 agreement, described the amendment as the most reactionary bill ever introduced since the formation of the state assembly in 1957.

The then president K R Narayanan too refused his assent on the ground that the state assembly was not empowered to amend an act that fell within the Ninth Schedule of the Constitution, as also considering the controversial clauses it included. In order to avoid further contempt of court, The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999 was hustled through the state assembly: encroachments of up to two hectares of land were to be condoned. In other words, the alienated lands need never be restored now. In addition, land of up to one acre was to be provided to the landless adivasis in the districts they resided in, within a period of two years. The government estimated that there were about 11,000 such families. By bringing in a new set of beneficiaries, the government hoped to divide the adivasis further between the beneficiaries of the 1975 Act (who stood to lose by the 1999 Act) and the new set of beneficiaries under the 1999 Act, thus further complicating matters. Moreover the bill had now been tailored to take it out of the president's ambit and into the realm of state subjects as one dealing with 'agricultural lands'. Caught in this legal tussle, with no particular material assistance to hand, the land-robbed adivasis were pushed towards mass starvation deaths – more than 30 adivasis died in the 1990s alone. Tired beyond endurance, the adivasis and certain radical dalit groups began to rise in revolt.

On October 7, 1999, the government began distribution of about 225 acres of land to the 76 tribal families and another nearly 1,200 acres to nearly 400 tribal families in the Attapady region of Palakkad district – these were surplus lands, barren, inhospitable and uncultivable. On October 11 the high court issued an interim stay to the operation of Sections V and VI of the 1999 Act, which permitted alternate land to be given instead of restoration of alienated lands. On December 16, 1999, the division bench ruled that the government of Kerala was guilty of contempt of court and gave it another 5 months to implement the 1975 Act. The government was warned that if it failed to carry out the restoration of land to the adivasis for which no compensation was payable and in which no appeals are pending within five months time, the chief secretary would be held punishable. The bench also said that the 1999 Act could not override the 1975 Act.

Moreover, the legislations concocted by the state were frankly violative of Articles 3, 13 and 14 of the ILO Convention 107 (ratified by India) that relate to protection of properties, respect of customary procedures of transmission of traditional ownership of lands, prevention of non-tribes from securing ownership or use of lands belonging to tribals and provision of more land when they have not the area necessary for providing the essentials of normal existence. They are also violative of Section II of the ILO Convention 169 on Indigenous and Tribal Populations (which India is yet to ratify), which explicitly recognises the concept of territoriality of the tribals and the relationship it has with their identity, and their right to ownership and possession over lands traditionally occupied. In addition, they are also violative of Part VI of the UN draft Universal Declaration of the Rights of Indigenous Peoples, which is being discussed at the level of the ECOSOC of the UN. The state has thus worked itself into knots over the adivasi land question, earning reprimands from the state – judiciary and finally seeking refuge with the Supreme Court whose verdict is still awaited.

While the mainstream left fought shy of the adivasi land question, it was the radical left – the Naxalites – that struck a chord with the adivasis. The Karshaka Sangam of the Naxalites, however, was soon disbanded with its leader Vargheese being killed in a fake encounter with the police in February 1970. Other mainstream parties too had to adopt a similar organisational structure: Adivasi Sangam by the Jan Sangh, Kerala Girivarga Sangam of the CPI, Kerala Adivasi Samajam of the Congress were some such examples. New Adivasi organisations emerged in different parts of Kerala in the latter half of 1980s and early 1990s, and included Mala Araya Mahasabha in Idukki, Girijan Sevak Samithi in Attapady, All Kerala Tribal Workers Union in Pathanamthitta, Adivasi Vikasana Pravarthaka Samithi, Adivasi Federation, Adivasi Aikya Samithi and so on in Wayanad and more recently the Adivasi Vimochana Munnani in Kannur; the state-level CPI(M)-led Adivasi Kshema Samithi came into prominence, riding on the success of the autonomous movements such as the one initiated by C K Janu.

In mid-July 2001, 32 starvation deaths were reported from the tribal areas of Palakkad, Kannur and Wayanad districts. Responding to this, an intense struggle was launched by Janu-Geethanandan led ADSS

with the setting up of refugee camps before the residence of the chief minister and the Secretariat at Thiruvananthapuram, the state capital on August 30, 2001.⁹ It was this struggle that spawned the AGMS and successfully negotiated the historic 2001 accord with the Antony government.

The Agreement

The major components of the commitment undertaken by the government are the following:

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

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

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

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

(5) A tribal mission would be constituted to carry out all the above headed by a senior IAS officer. However, the state bureaucracy and its political leadership failed to implement these clauses. The government's report sent to the NHRC in April 2002 states that 568 families had been provided 1,308 acres of land since January 1, 2002 when the chief minister along with C K Janu of the AGMS commenced the first land distribution at Marayur in Idukki district.¹⁰ What do these figures mean? Simply put, only 1.06 per cent of the families have been provided 2.2 per cent of the identified land within the first four months of the stipulated 12-month period. Since then till date there has not been any substantial or significant change in these figures except that the land actually allotted has been reported in the media as 1,746.62 acres to 843 families. Only 3 per cent of the promised land has been allotted in a year. At this rate it would take the government another 33 years to complete the task! Also the rate of allotment has gone down drastically as only around 434 acres have only been distributed since April 2002 to February 2003 as compared to over 1,300 acres in the first four months. Does this not mean that it would take another half-century or more for the land distribution to take place, if indeed it does take place? When it is acknowledged that the vast majority of the adivasis are facing poverty, exploitation, hunger, malnutrition and starvation, should it not also lend a sense of urgency to the implementation of the agreement immediately? Of course, the popular refrain is that the land distribution is fraught with numerous legal and administrative hurdles. Let us examine them too.

In May 2002, the head of the tribal mission was quietly replaced by a forest official of the governments' choice. The lands identified for distribution plummeted from 59,452 acres to a mere 2,300 acres in June 2002 and further to 1,223 acres when it came into the hands of the cabinet subcommittee.¹¹ That the adivasis have prior claims to most of these lands before they were declared state property is a historical point that is conveniently glossed over. Instead it almost appears as if the lands are being bestowed by the state on the adivasis out of sheer generosity. Another major hurdle is said to be that a large portion of lands identified earlier are actually disputed land with the forest department and revenue department or are in the process of being confirmed as reserved forests, and that the Forest Conservation Act 1980 stands as a legal hurdle in the way of denotifying and transferring these lands to the adivasis. This is totally misleading and is a gross misrepresentation of legal facts and the rights of adivasis on forests.

Legal Rights on Forests

The Forest Conservation Act 1980 prohibits all encroachments of the forests from the year 1980. Forests that had earlier formed a state subject were brought under the concurrent list. Hence, the state government does have the power to denotify forestlands but with the prior concurrence of the central government. And in the case of denotification, an equivalent area has to be afforested as compensation. There is also a general impression that the Supreme Court had issued orders to evict encroachers consequent to the Godavarman Tirumulpad case (WP 202/95) that had gained fame as the 'forest case'. However, these are applicable to encroachments that occurred after the year 1980 only. It also means that the pre-1980 'encroachments' are not to be treated as encroachments but are to be settled as per the law. It also means that those who have

claims or rights to the forest areas prior to 1980 are also to be settled by law. Further it is surprising but true that the ministry of environment and forests, government of India, had issued firm orders regarding these matters that are of immense relevance to the adivasis and which would be applicable to large portions of lands that were scheduled to be distributed to the adivasis under the 'agreement'.

Consequent upon the Forest Conservation Act of 1980, the state governments as well as the central government have consistently violated the laws and their own orders with regard to the regularisation of the rights of adivasis and forest dwellers. To partially rectify this situation, the ministry of environment and forest had issued a number of orders No13-1/90-FP (1), No13-1/90-FP (2), No13-1/90-FP (3) and No13-1/90-FP (5) dated September 18, 1990 regarding encroachment on forest lands, review of disputed claims over forest lands arising out of forest settlement, disputes regarding pattas/leases/grants involving forestland, conversion of forest villages into revenue villages and settlement of other old habitations respectively. The commissioner for SC and ST had issued a monograph¹² describing how throughout all these years, acts of omission and commission have ensured the violation of the rights of scheduled tribes. These orders attempt to rectify these violations. The Supreme Court (Pradip Prabhu vs state of Maharashtra and others) had in March 1995 directed Maharashtra and Madhya Pradesh to decide on the people's claims in the light of these very orders. V K Bahuguna, the inspector general of forests, ministry of environment and forests, has further clarified and reiterated on October 30, 2002 (No IGF/FC/2002) to all the chief secretaries and the secretaries (forests) and the principal chief conservators of forests that the guidelines issued earlier on September 18, 1990 (No13-1/90-FP) relating to regularisation of encroachments of forestlands should be adhered to.

(1) The circular on "Regularisation of land rights in reserved forests" (No 13-1/90-FP (1) dated September 18, 1990) relates to encroachments on forestland. The encroachments have been divided into two groups namely (i) before enactment of Forest Conservation Act 1980 (October 25, 1980) and (ii) after enactment of Forest Conservation Act 1980. All lands claimed falling within the reserved forests that are cultivable to those whose livelihood are dependent on them and have been claimed prior to 1980 should be conferred full rights to eligible persons for lands except for lands beyond 15 degrees or land on the bank of a stream which are prone to soil erosion. Even those who have encroached on the lands after 1980 but who make a living out of these lands and do not have any other alternative means of living should not be evicted unless they are provided an alternative means of livelihood. The government of India has accepted this premise.

(2) The circular on "Regularisation of rights on lands that are disputed in forestlands arising out of declaring an area as 'forest'" [No 13-1/90-FP (2) dated September 18, 1990] relates to disputed claims over forest lands arising out of forest settlement. There are cases where the adivasis have been in occupation of land prior to the formal process of reservation of the forests. For a number of reasons, their rights were not settled or settled incompletely or wrongly. The people may not have known or been informed about the process of reservation and thus their rights were not settled by the settlement officer. Or the process of settling of rights might have been incomplete, faulty or not settled at all by the concerned officials. Or it might have been that the final notification under Section 20 of the Indian Forest Act 1927 or relevant section has not been issued so far. The claims in these categories of areas should be verified by the government through a committee representing the forest, revenue and tribal welfare department as to whether the claimant has been in possession of the said land at the time of notification declaring the area as 'deemed reserved forest' or the claimant was in possession of the land when notification under Section 4 of the Indian Forest Act 1927 stating the intention of the government to declare the area as forests was issued. The rights to these lands are to be restored.

(3) The circular 'Regularisation of rights of lands that were issued pattas or leases or grants which are now under the category of 'forest' [No 13-1/90-FP (3) dated September 18, 1990] relates to disputes pertaining to pattas/leases/grants involving forest lands. Some people may have been issued pattas/leases for lands, which have been temporary, or conditional. They may have lapsed or forgotten or not renewed deliberately by the government. These lands are now categorised as reserved forests. Some forestlands may have been transferred to the revenue department and the revenue department may have issued pattas. But the legal status continues to be reserved forests. In these cases the proper authority has issued the records but the different government departments dispute the lands themselves. The inter-departmental disputes should not affect the rights of the claimants. Hence, these are to be regularised by the government.

(4) The circular 'Conversion of forest villages into revenue villages and settlement of old habitations' [No 13-1/90-FP (5) dated September 18,1990] relates to conversion of forest villages and all other habitations into revenue villages. These should also not fall under the earlier categories as in 1, 2 and 3 above. These should be regularised especially if they have been in occupation for 20 years.

If any of the lands intended for distribution fall within the scope of the above categories, they could immediately be disposed of following the provisions of the above orders which the Supreme Court too has endorsed while issuing directions to Maharashtra and Madhya Pradesh. Where there are other problems, the government has the power to issue executive orders to rectify them, set up tribunals to expedite the cases speedily where the disputes are legal or even pass necessary amendment or enact legislations where the government feels there is a need for a suitable law and even insert in the Ninth Schedule such law if they are likely to lead to litigation and thus delays. All these options are anyway available. These were resorted to subvert a pro-advansi law (KST Act 1975) is elaborate history. But the unwillingness of the state to do the same this time round to fulfil the 'agreement' is a clean exposure of the government and the political parties for what they are.

With respect to the declaration of tribal habitations as 'Scheduled Area' under Schedule V of Article 244 of the Constitution no advansi habitation in Kerala has been declared scheduled area till date thus denying the enjoyment of this most vital specific part of the Constitution by the adivasis of Kerala in stark contrast to their counterparts in other states – Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Bihar, Jharkhand, Chhattisgarh, Orissa, Himachal Pradesh and Andhra Pradesh. Owing to the non-scheduling of advansi habitations, it has not been possible to give effect to the provisions of panchayats (Extension to the Scheduled Areas) Act of 1996 (PESA, 1996) through required legislations at the state level thus denying the state of Kerala the enlightened provisions therein.

To give full expression to Article 40 of the Constitution, the Constitution was amended through the 73rd and 74th Amendments regarding panchayats and municipalities respectively but excludes the Schedules V and VI areas besides the states of Nagaland, Meghalaya and Mizoram, the hill areas of Manipur and the Gorkha Hill Council Area, for which the parliament was to make separate enactments. In 1994, the government appointed a 22 member High Level Committee with Dileep Singh Bhuria as chairman, to recommend guidelines for the law to extend the panchayat raj to Schedule V areas. The Report of the Committee of Members of Parliament and Experts Constituted to make Recommendations on Law Concerning Extension of Provisions of the Constitution (Seventy-Third Amendment) Act, 1992 to Scheduled Areas was submitted in 1995. The provisions of the Panchayats (Extension to the Scheduled Areas) Bill, 1996 [PESA 1996] was enacted and became law on December 24, 1996. With this, the law considered appropriate for scheduled areas was created giving a concrete form to the V Schedule, which also provides for incorporation of the pattern of the VI Schedule in the application of PESA 1996. The provisions of this act essentially empower the adivasis and their more functional unit, the gram sabha, to take full responsibility to decide and implement matters on certain defined subjects. In this alternative mechanism not only do the adivasis participate, but are entrusted with the responsibilities and required power with adequate legal support from the state. To ensure that the adivasis are empowered at the gram sabha level and at other levels as may be created under this act, it is mandatory for the state to immediately take a cabinet decision proposing the constitution of the 'scheduled area' to the parliament which on passing a resolution will enable the president of India to issue the required notification with the list of advansi habitats (hamlets/'oorukal') to be declared as 'scheduled area'.

In the Constitution, the scheduled area is defined as such areas as the president may by order declare to be scheduled areas vide Clause (2) of Para 6 of Article 244. The Bhuria Committee in 7(2) states "The process of scheduling was commenced in the fifties and was resumed in the seventies as a part of making the tribal sub-plan and scheduled areas coterminous. But somehow it has remained incomplete. It is necessary that the remaining Tribal Sub-Plan and MADA areas, as well as similar pockets in West Bengal, Tamil Nadu, Kerala and Karnataka be covered by scheduled area notification." Further, in item 28 of "Summary of Recommendations", the committee has specified, "The process of scheduling of tribal areas in the country earlier has remained incomplete. It is necessary that the remaining tribal sub-plan and MADA areas as well as similar other pockets should be included in the scheduled areas." And in 21(3) it says: "Many of the

present-day administrative boundaries were determined during colonial times based on colonial compulsions....By and large, the earlier boundaries have stayed, with the resulting situation that tribal people are located, be it state, district or block, marginalising them in every way and fragmenting larger communities and areas. States should consider, say within a period of two years, reorganisation of the boundaries based on ethnic, demographic and geographic considerations.” Further, the committee in (22) states “The primary unit we contemplate may be a gram sabha or a hamlet, or a group of hamlets or a village, as the case may be, in a tribal area. It comprises a face-to-face community managing its affairs in accordance with well-established traditions and customs...A hamlet/village comprising a community in a tribal area must be distinguished from the revenue village which is more of an administrative entity. It must be clearly understood that in tribal areas hamlets are more common than big villages”. In other words, a hamlet may contain 5, or more families as the case may be. It is amply clear that the scheduled area consists of all tribal habitations and from the foregoing, ‘tribal hamlets’. “While drawing boundaries of villages, efforts should be made to include in it that part of forest (both reserve and protected) which supports tribal livelihoods” besides the community/village lands, title lands, common property resources, etc. The Kerala government has ignored the recommendations of the Bhuria Committee since 1995 and continues to ignore these till date. It is very pertinent to note here that Kerala had placed before the Scheduled Areas and Schedule Tribes Commission appointed under Article 339 of the Constitution (with U N Debar as chairman), the proposal for scheduling certain areas. The total area recommended then was 1064 square miles with a total population of (1961 Census) of 1,76,129 out of whom 1,12,000 or 63.5 per cent were tribals. This has not been followed up or pursued in the last 40 years or more.

What hard lessons were learnt from the above experience? The constitutional provisions in its expression through the KST Act 1975 was consistently violated by the governments of the two coalitions that have been ruling the state. The existing politico-administrative arrangement failed to uphold the law by its unwillingness to implement it. The law itself was attempted to be amended and subsequently repealed and replaced quite contrary to original intentions as well as the constitutional obligation despite popular struggles opposing the changes. The judicial response has been grossly inadequate (14 years having gone by without as yet a final decision). The government violated the high court orders consistently disregarding judicial pronouncements. It required a popular uprising to challenge and force the state to come to terms with the injustice. It was against such a backdrop that the AGMS took matters into its own hands in a symbolic and pragmatic move: a tribal court was convened in Wayanad in August 2002 at which it was declared that in the context of the state’s failure to honour the agreement, they would occupy their ancestral domains. This was to be a symbolic gesture to signal their discontent and to assert their right to ownership and autonomy. Other adivasi organisations too, have initiated similar attempts during the same period, as in the case of the state-owned orange farm at Nelliampathi. But the attempt at a peaceful occupation of Muthanga by the AGMS met with the most inhuman kind of retaliation ever; the police crackdown occurred after six weeks of peaceful existence; the horrendous images that flashed by the media, braving the news embargo, speak for themselves.

But what rankles most in this entire episode is the fascism exhibited by the people’s representatives in the state legislature, including the speaker who considered gunfire a fitting retribution to the adivasis’ attempt at ‘self-rule’. AGMS was accused of ‘encroachment’, when all it had done was to occupy the outskirts of the Muthanga range to which the adivasis have a natural claim – ownership being an irrelevant/foreign concept for them. The fact that the area has six ‘paniya’ shrines therein is proof enough of this. Moreover, there are already nearly 89 settlements/enclosures with a total of 2,556 families living within the sanctuary. Their original rights and claims to these lands may have been erased with vast tracts being cleared for eucalyptus cultivation to serve Indian big capital – the Birla Gwalior Rayons – or in the process of making it a part of the sanctuary in 1973.

However, the AGMS has driven the message home. Chastened by the public anger at its police action in Muthanga, the government now remains immobilised in the face of a series of fresh occupations in the Kerala part of the western ghats – as of now, more than a dozen new settlements have been set up by several adivasi groups/organisations. Perhaps if the government were to handover the land in Muthanga – “which symbolises the sacrifice and tribulations” of the historically disadvantaged ethnic minority – to the adivasis and make lands available to the landless adivasi families and to bring all adivasi regions under Schedule V

of Article 244 which assures social rights for a participatory self-rule and autonomy, it would herald a new era in adivasi history.

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Notes

1 For an eyewitness account, see V Muhammad Sharif, 'Muthanga Police Firing: The Unthinkable is Happening in Kerala', see <http://www.countercurrents.org/hr-sharif.htm> or in Madhyamam daily on February 28, 2003; the images captured by Shaji of Kairali TV provides irrefutable evidence.

2 This shocking revelation was made by Binoy Viswam, MLA (CPI) who visited the adivasis in jail at Kozhikode.

3 C R Bijoy, 'Injustice in God's Country: The Adivasi Uprising in Kerala', Himal South Asian, March 2003.

4 Kunhaman, K 'The Tribal Economy of Kerala. An Intra-Regional Analysis', Economic and Political Weekly, Vo XX, No 11, March 16, 1985, pp 466-74.

5 For an historical account see K Ravi Raman, 'Intervention in the Western Ghats: An Inquiry into the Historical Processes of Loss of Biodiversity and Community Sources of Livelihood' in P Pushpangadan, K Ravi and V Santhosh (eds), Conservation and Economic Evaluation of Biodiversity, Vol 2, Oxford-IBH, New Delhi, pp 525-44; 'Global Capital and Peripheral Labour: Political Economy of Tea Plantations in Southern India, c 1850-1947', Unpublished doctoral thesis, CDS, Thiruvananthapuram, 1999.

6 See for example the issues of bonded labour, abuse of adivasi women in Bhengra, Ratnaker, C R Bijoy and Shimreichon Luithui, The Adivasis of India, Minority Rights Group International, London, 1998, pp 24-26.

7 For mere information see the following works: A K, Cheria, K Narayanan, C R Bijoy and Edwin, A Search for Justice: A Citizens' Report on the Adivasi Experience in South India, St Paul Publications, Bangalore, 1997; Bijoy, C R, 'Adivasis Betrayed: Adivasi Land Rights in Kerala', Economic and Political Weekly, Vol XXXIV, No 22, May 29-June 4, 1999, pp 1329-35; T T Sreekumar and Govindan Parayil, 'Democracy, Development and New Forms of Social Movements: A Case Study of Indigenous People's Struggle in Kerala', The Indian Journal of Labour Economics, Vol 45, No 2, 2002:287-309 and K Ravi Raman, 'Breaking New Ground: Adivasi Land Struggle in Kerala', EPW, March 9, 2002:916-18.

8 Based on the comparison of data from the 1976 Socio Economic Survey of Scheduled Tribes and the Adivasi Master Plan Report of 2001.

9 For a detailed account of the various phases of the struggle, see K Ravi Raman, 'Breaking New Ground', op cit.

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

11 Krishnadas, N V, 'Kanakkeduppum Kadukayari, Kanakkukoottalukal Paali', Malayala Manorama, February 21, 2003, p 8.

12 The Commissioner for SC and ST, Resolution of Conflicts Concerning Forest Land – Adoption of a Frame by Government of India, Monograph, GoI, January 1990.