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INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS

**INDIA:
Indigenous Peoples are Being Targeted for their Lands &
Natural Resources**

A Submission to the UN Human Rights Committee for its 141st Session

[01 July 2024 - 23 July 2024]



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1. Executive summary

In India, about 705 ethnic groups are listed as Scheduled Tribes (usually referred to as Adivasis, literally meaning original inhabitants). With an estimated population of 104 million, Indigenous Peoples comprise 8.6% of the total population. They face disproportionate human rights violations, often targeted or penalised for preserving nature and natural resources on their lands and territories. India has enacted a number of positive laws and some of the laws were noted by the UN Human Rights Committee in its previous concluding Observations in 1997.ⁱ

If there is one particular trend, that the UN Human Rights Committee should take note of, it is the systematic nullification of the legal protection to Indigenous Peoples/scheduled tribes. The other critical issues of importance are:

- Fast-tracking of the extinction of the Shompens and Nicobarese Indigenous Peoples by the Rs 72,000-crore (Euro 8116.42 million) Great Nicobar Island mega project;
- Criminalisation of the acts seeking enforcement of the right to free, prior informed consent against coal industries in Hasdeo Arand forests (Chhattisgarh);
- sexual violence against Indigenous women especially during the conflict in Manipur; and
- Indigenous Peoples being the largest group of Internally Displaced Peoples (IDPs) in India and the government of India not providing assistance to the conflict induced IDPs and not taking measures for their rehabilitation and resettlement.

The UN Human Rights Committee should consider the following recommendations:

Positive elements:

- Welcome the increasing use of the term “Indigenous Populations” in official notifications such as the establishment of a High-Level Committee to look into the “social, economic, cultural and linguistic issues of the indigenous population in the State of Tripura”ⁱⁱ or in its justification for the Citizenship Amendment Bill, 2019 and celebration of International Day of the World’s Indigenous Peoples celebrated on August 9 every year by various State governmentsⁱⁱⁱ and political parties of India such as the Bharatiya Janata Party (BJP), the Indian National Congress^(INC) and the Trinamool Congress (TMC).^{iv}

Issues of concerns:

- Nullification of the right to free, prior and informed consent recognized under the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) through the Forest (Conservation) Amendment Act, 2023 (FCAA) which immediately puts at least 20 million Indigenous Peoples (4,570,932 individual and community claims over forest



lands submitted by 4.44 persons per family) vulnerable to displacement given the permission to diversion of their forest lands under the FCAA

- Fast-tracking of the extinction of two Indigenous tribes on the verge of extinction i.e. the Shompens and Nicobarese – which are classified by the Government of India as “Particularly Vulnerable Tribal Groups” through the Rs 72,000-crore (Euro 8116.42 million) mega project on Great Nicobar Island, which, *inter alia* includes International Container Transshipment Port (ICTP) to be commissioned in 2028^v on which 11 players submitted the bid, building an international airport, a township and a power plant over 16,610 hectares in the Island.^{vi}
- Continued deforestation activities in the Parsa East and Kanta Basan (PEKB) coal mining projects being operated by the Adani Group in Hasdeo Arand forest despite the Hasdeo forest having been classified as a “No-Go Area” for coal mining based on a joint study conducted by the Ministry of Coal and Ministry of Environment, Forests and Climate Change (MoEFCC) in 2009,^{vii} resolutions passed by 20 Gram Sabhas (village assemblies) against the auction of coal mines in the region in 2015^{viii} and the Chhattisgarh State assembly passing a unanimous resolution that mining activities will not be carried out in Hasdeo on 26 July 2022 and the Chhattisgarh government submitting an affidavit to the Supreme Court in July 2023 stating that aside from the PEKB project, there is no necessity to allocate or use any new mining reserve areas for mining in Hasdeo.^{ix}
- the State party failed to bring the conflict between the Meiteis and Kukis to an end for over a year from 3 May 2023 resulting into killing of over 200 persons, displacement of over 70,000 persons, burning down of 220 churches, and about 4,694 other properties, effective ethnic cleansing of the Kukis from Imphal and effective ethnic cleansing of the Meiteis from Churachandpur, *inter alia*, caused by missing of approximately 5,600 weapons and 650,000 rounds of ammunition from the State Armories.^x
- targeted sexual violence against Indigenous women, in particular, parading of two Indigenous women and sexual assault by a mob in Manipur during the ethnic conflict after being handed over to the mob from police custody at B Phainom village in Kangpokpi district on 4 May 2022^{xi} and torture, gang-rape and murder of two Indigenous women, aged 21 and 24 by a mob of about 100-200 persons in state’s capital Imphal on 5 May 2023^{xii}
- Indigenous Peoples, despite being about 8.6% of the total population of India, constitute the largest group among conflict and development induced internally displaced persons (IDPs), the absence of policy of the government of India on the conflict induced IDPs despite India witnessing various conflicts from 1947; and India not extending any financial assistance to about 12,000 Kukis who have taken shelter in Mizoram after being displaced from Manipur during 2023, and no measures taken for rehabilitation and settlement of 50,000 Indigenous Peoples belonging to the Guthi Koya tribe displaced by the Maoists conflict from Chhattisgarh and currently living in Andhra Pradesh and Telangana;



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- The failure to withdraw five cases of sedition under Section 124A of the Indian Penal Code as of December 2023 filed against Indigenous Peoples activists engaged in the Pathalgadi movement in Jharkhand's Kunti district despite withdrawal of the other 21 cases;^{xiii}
- The continuation of the Armed Forces Special Powers Act, 1958 in parts of Nagaland,^{xiv} Arunachal Pradesh^{xv}, Assam^{xvi}, Manipur^{xvii} and Jammu and Kashmir^{xviii} despite 76% reduction in insurgency incidents in 2022 in comparison to 2014 in the North East India as per the Government of India^{xix}

Recommendations:

- Amend the Forest (Conservation) Amendment Act, 2023 (FCAA) for compliance with the the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and ensure that at least 20 million Indigenous Peoples (4,570,932 individual and community claims over forest lands submitted x 4.44 persons per family) who submitted the claims under the Forest Rights Act and those who are yet to submit their claims are not displaced/evicted through diversion of lands under the FCAA;
- Ensure that Indigenous Shompens and Nicobarese who are classified by the Government of India as "Particularly Vulnerable Tribal Groups" are ensured of their right to survival with distinct identities and cultural practices and the Government of India ensures no harm to them through the Rs 72,000-crore (Euro 8116.42 million) mega project on Great Nicobar Island;
- Ensure that further coal mining projects are not undertaken in Hasdeo Arand forest and it be treated as a "No-Go Area" for coal mining based as recommended by a joint study conducted by the Ministry of Coal and Ministry of Environment, Forests and Climate Change (MoEFCC) in 2009;^{xx}
- Withdraw the cases filed against Human Rights Defenders including Indigenous Peoples rights defenders involved in Pathalgadi movement;
- Ensure fast track trial of the sexual violence cases against Indigenous women including the ones in Manipur;
- Adopt a policy on the conflict induced internally displaced persons in line with the Guiding Principles on Internal Displacement and ensure that India extends financial assistance to about 12,000 Kuki who have taken shelter in Mizoram and further take measures rehabilitation and settlement of 50,000 Indigenous Peoples belonging to the Guthi Koya tribe displaced by the Maoists conflict from Chhattisgarh and currently displaced in Andhra Pradesh and Telangana;



- Repeal the Armed Forces Special Powers Act, 1958

2. Positive developments since the previous examination in 1997 relating to Indigenous Peoples

The Government of India has increasingly been using the term “Indigenous Populations” in official notifications such as the establishment of a High-Level Committee to look into the “social, economic, cultural and linguistic issues of the indigenous population in the State of Tripura”^{xxi} or in its justification for the Citizenship Amendment Bill, 2019. The State government of Jharkhand declared the International Day of the World’s Indigenous Peoples celebrated on August 9 every year worldwide as a state holiday.^{xxii}

3. Current issues of concerns relating to Indigenous Peoples

3.1 Nullification of the right to Free, Prior and Informed Consent under the FCAA leaves at least 20 million Indigenous Peoples vulnerable to displacement

Because of the dilution of the right to free, prior and informed consent recognized under the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act)^{xxiii} and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006^{xxiv} (FRA) through the Forest (Conservation) Amendment Act, 2023^{xxv} (FCAA), the rights of Indigenous Peoples who had submitted 4,570,932 individual and community claims over forest lands stand without any protection from diversion. The average family size in India is about 4.44 persons^{xxvi} and assuming that one person submitted one claim under the FRA, at least 20 million Indigenous Peoples remain vulnerable to displacement because the FCAA allows diversion of their lands without their free, prior and informed consent.

A. Dilution of the right to free, prior and informed consent

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 provides that recommendations of the Gram Sabha or the Panchayats of Scheduled Tribes is mandatory prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas under Section 4(k); prior recommendation of the Gram Sabha or the Panchayats is mandatory for grant of concession for the exploitation of minor minerals by auction under Section 4(l); Gram Sabha shall have the power on the ownership of minor forest produce Section 4(m)(ii); and the Gram Sabha shall have the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe under Section 4(m)(iii).^{xxvii}

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, *inter alia*, under Section 3(2)(ii) provided that “*Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980)...diversion of forest land which involve felling of trees not*



exceeding seventy-five trees per hectare” except certain identified facilities managed by the government is prohibited and such diversion further subject to the mandatory “clearance of such developmental projects by the Gram Sabha”. If any diversion is allowed, “the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package to be obtained in writing” is mandatory as per Section 4(e) of the FRA. The purposes for which diversion of forest lands is allowed under the FRA are for construction of “(a) schools; (b) dispensary or hospital; (c) anganwadis;(d) fair price shops; (e) electric and telecommunication lines; (f) tanks and other minor water bodies; (g) drinking water supply and water pipelines; (h) water or rain water harvesting structures; (i) minor irrigation canals; (j) non-conventional source of energy; (k) skill upgradation or vocational training centres; (l) roads; and (m) community centres.”^{xxviii}

The Supreme Court of India in its judgment in Orissa Mining Corporation Versus Ministry of Environment & Forest & Others [(2013) 6 S.C.R. 881] upheld the mandatory consent of the Gram Sabhas as provided under the PESA and the FRA.^{xxix}

On 4 August 2023, the Government of India enacted the Forest Conservation Amendment Act, 2023 and it inserted Section 4(2) to exempt the following lands from the definition of “forest” i.e. “(a) such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case; (b) such tree, tree plantation or reforestation raised on lands that are not specified in clause (a) or clause (b) of sub-section (1); and (c) such forest land,— (i) as is situated within a distance of one hundred kilometres along international borders or Line of Control or Line of Actual Control, as the case may be, proposed to be used for construction of strategic linear project of national importance and concerning national security; or (ii) up to ten hectares, proposed to be used for construction of security related infrastructure; or (iii) as is proposed to be used for construction of defence related project or a camp for paramilitary forces or public utility projects, as may be specified by the Central Government, the extent of which does not exceed five hectares in a Left Wing Extremism affected area as may be notified by the Central Government”.^{xxx}

Further, the Forest Conservation Amendment Act, 2023 inserted Section 5 to allow “work relating to or ancillary to conservation, development and management of forests and wildlife, such as— (i) silvicultural operations including regeneration operations; (ii) establishment of check-posts and infrastructure for the front line forest staff; (iii) establishment and maintenance of fire lines; (iv) wireless communications; (v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines; (vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972, owned by the Government or any authority, in forest areas other than protected areas; (vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and (viii) any other like purposes, which the Central Government may, by order, specify.....”;^{xxxi}

A bare reading of the PESA and the FRA vis-à-vis the Forest Conservation Amendment Act, 2023 makes it clear that:



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- Sections 4(2) and Section 5(a) of the Forest (Conservation) Amendment Act of 2023 violate the FRA including the non-obstante clause i.e. *“notwithstanding anything contained in the Forest (Conservation) Act, 1980 (69 of 1980)”* under Section 3(2) which upholds the supremacy of the FRA, prohibition on diversion of forest lands other than those specified under Section 3(2)(c) by allowing blanket diversion and mandatory informed consent of the Gram Sabhas under Section 3(m)(ii) which is no longer required;
- Sections 4(2) and Section 5(a) of the Forest (Conservation) Amendment Act of 2023 also violate various provisions of the PESA Act, in particular, Section 4(k) regarding the mandatory recommendations of the Gram Sabha or the Panchayats at the appropriate level prior to grant of prospecting license or mining lease for minor minerals in the Scheduled Areas; Section 4(l) regarding the mandatory prior recommendation of the Gram Sabha or the Panchayats at the appropriate level for grant of concession for the exploitation of minor minerals by auction; Section 4(m)(ii) regarding the power of the Gram Sabha on the ownership of minor forest produce and Section 4(m)(iii) regarding the power of the Gram Sabha to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe as the FCAA overrules the requirements under the PESA Act; and
- Sections 4(2) and Section 5(a) of the Forest (Conservation) Amendment Act of 2023 nullify/violate the Supreme Court of India’s judgment in *Orissa Mining Corporation Versus Ministry of Environment & Forest & Others [(2013) 6 S.C.R. 881]* that had upheld the mandatory consent of the Gram Sabhas as provided under the PESA and the FRA.

B. *Impact of the nullification of the right to FRIC under the FCAA: About 20 million Indigenous Peoples remain vulnerable to displacement through diversion of their forest lands*

Because of the nullification of the FPIC through the FCAA, the rights of Indigenous Peoples who had submitted 4,570,932 individual and community claims over forest lands stand without any protection from diversion.

The Ministry of Tribal Affairs, Govt of India in its reply to [Unstarred Question No. 1258 dated 13/12/2023 in the Raya Sabha, Upper House of Parliament](#) stated that as on 31.10.2023, a total 4,570,932 claims for forest lands have been submitted out of which a total of 2,343,009 titles (2,229,013 individual titles and 113,996 community titles) covering an area of 18,070,577.43 acres have been issued while about 2,227,923 applications for claims are still pending adjudication. Section 4(5) of the FRA provides that *“Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.”* It means during the pendency of the applications for claims, no forest dweller can be removed/evicted.

However, as the FCAA allows the diversion of these forest lands, Indigenous Peoples are without protection and no longer enjoy the right to free, prior and informed consent.



In addition, the forest lands of millions of other Indigenous Peoples living within 100 kilometers of international borders especially in Arunachal Pradesh, Nagaland, Mizoram, Manipur, Tripura and Meghalaya inhabited by Indigenous Peoples can be diverted under the FCAA.

3.2. Fast-tracking the extinction of the Shompens and Nicobarese in Andaman and Nicobar Islands

Out of all the Indigenous Peoples in India, about 75 groups are identified as Particularly Vulnerable Tribal Groups (PVTGs) by the Government of India for being on the verge of extinction. The total population of the PVTGs as per the 2011 Census was 1,702,545, spread across 18 States and Union Territory (UT) of Andaman and Nicobar.^{xxxii}

On one hand, on 15 November 2023, Prime Minister Narendra Modi launched the Rs 240,000-million Pradhan Mantri Janjati Adivasi Nyaya Maha Abhiyan (PM-JANMAN) scheme for the PVTGs of India,^{xxxiii} to provide a number of facilities to PVTGs including housing, drinking water and sanitation, access to education, health and nutrition, road and telecom connectivity, and sustainable livelihood opportunities.^{xxxiv}

On the other hand, the Government of India continued with the much-criticized Rs 72,000-crore (Euro 8116.42 million) mega project on Great Nicobar Island which threatens the survival of two Indigenous tribes – the Shompens and Nicobarese – which are classified by the Government of India as “PVTGs”. The first phase of the International Container Transshipment Port (ICTP) project is to be commissioned in 2028 and the Detailed Project Report of the ICTP project is under finalization for inviting the tenders in early 2024.^{xxxv} Apart from ICTP, three other components involve building an international airport, a township and a power plant over 16,610 hectares in the Island.^{xxxvi}

On 3 March 2023, the National Green Tribunal (NGT), a statutory body that deals with expeditious disposal of complaints related to environmental protection and other natural resources, temporarily put on hold the mega project on Great Nicobar Island while hearing a petition challenging the hasty clearances given to the project. The NGT, identifying certain deficiencies pointed out in the petition, constituted a High-Powered Committee (HPC) to revisit the environment clearance (EC) granted to the project.^{xxxvii} However, the NGT refused to interfere with the environmental or forest clearances saying the project has great significance not only for economic development but also for defence and national security. The NGT’s stand was criticized by activists and conservationists for several reasons, including the fact that the HPC comprises government and other representatives that have already offered support to the project.^{xxxviii}

On 20 April 2023, the National Commission for Scheduled Tribes (NCST) also intervened in the matter by directing the administration of Andaman and Nicobar Island to submit facts and an action-taken report. The Commission also stated that the project is being undertaken without “prior consultation with the NCST”.^{xxxix}

The Government of India also failed to submit any information to the UN Committee on the Elimination of Racial Discrimination (CERD Committee). In April 2022, the CERD Committee asked the Government to submit information, by 15 July 2022, on the measures adopted to prevent any



adverse and irreparable impact of the mega project on the PVTGs.^{xi} On 8 December, the CERD Committee expressed its regret about the lack of response from India and urged the Government of India “to adopt all necessary measures to address the allegations mentioned above and to protect the rights of the PVTGs in Andaman and Nicobar Islands.”^{xli}

On 3 January 2024, the Government of India confirmed that it has received expressions of interest (EOIs) from 11 players for this Rs 41,000 crore (USD 5 billion) project, including investment from both government and public-private partnership (PPP) concessionaires.^{xlii} On 3 May 2024, senior officials of the Government of India undertook the field visit to review the project.^{xliii}

The project will fasten the extinction of particularly vulnerable tribal groups in the area.

3.3. Criminalising of acts seeking enforcement of the laws protecting the rights of Indigenous Peoples

A. Hasdeo Arand forests, Chhattisgarh

Across India, the forest rights of Indigenous Peoples were violated. In the Parsa East and Kanta Basan (PEKB) coal mining project being operated by the Adani Group in Hasdeo Arand forest in Chhattisgarh, Indigenous communities are facing renewed onslaught.^{xliiv} In December 2023, the tree felling for PEBK Phase-2 extension coal mines in Hasdeo Arand has started despite protests from Indigenous Peoples and activists. Several Indigenous activists travelling to the area to protest against the large-scale felling of trees were detained by the police on 22 December, 2023. The Phase-2 of mining for PEBK will affect the Ghatbarra village, which will be “displaced entirely”. However, the Ghatbarra Gram Sabha has not given its consent for mining in the area as of today. Previously, the Indigenous Peoples alleged that fake consent was obtained from the Gram Sabhas in the Hasdeo Arand area.^{xlv}

Hasdeo Arand, spread over 1,500 kms through central India, is one of the last unfragmented forest landscapes. The area is home to many Indigenous Peoples, wild animals and birds, with an estimated five billion tonnes of coal buried under the dense forests. The region has one of India’s largest contiguous tracts of forest-cover (170,000 hectares).^{xlvi}

The Hasdeo coalfields comprise around 23 coal blocks located under the forested region of Hasdeo Aranya, a 5th Schedule area. The area spans through Korba, Sarguja and Surajpur districts, Chhattisgarh.^{xlvii}

In 2009, the Hasdeo forest was classified as a “No-Go Area” for coal mining based on a joint study conducted by the Ministry of Coal and Ministry of Environment, Forests and Climate Change (MoEFCC). A recent report by the Wildlife Institute of India (WII) substantiates the ‘No Go area’ status for the forest because of their irreplaceable, rich biodiversity, and socio-cultural values. However, the Chhattisgarh government ignored the report of WII and granted stage II clearance for Parsa Coal block.^{xlviii}

In 2015, 20 Gram Sabhas (village assemblies) unanimously passed a resolution against the auction of coal mines in the region. However, the resolutions were ignored by the state and coal blocks



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within the forest were put on auction. In 2016, community forest rights that had been granted to the residents of Ghatbarra village were cancelled by the state, alleging that the villagers were causing disturbances to the mining operations. This is despite the fact that there is no provision within the FRA for the cancellation of recognized rights in this way.^{xlix}

The Indigenous Peoples and activists have been protesting against massive tree felling in Hasdeo forest as the same has a direct impact on their lives (livelihood, culture, religious practices, identity) due to the deforestation and mining activities. However, the protests are without success so far. In fact, the activists and organisations raising the Hasdeo forest issues are being targeted or subjected to repression.

i. Current protest and repression

The Indigenous Peoples have been protesting against violations of existing laws including the Forest Rights Act, 2006 and PESA Act. They alleged that fake consent was obtained from the Gram Sabhas in the Hasdeo Arand area.

In December 2023, the tree felling for Parsa East and Kanta Basan (PEKB) Phase-2 extension coal mines in Hasdeo Arand forest began despite protests from Indigenous Peoples and activists. The site of PEKB coal mine had been allotted to Rajasthan State Power Generation Corporation Limited (RSPGCL) by the Ministry of Coal. The Adani Group has been excavating coal from the PEKB mine since 2013 on behalf of the RSPGCL.ⁱ

On 22 December 2023, several Indigenous activists who were travelling to the area to protest against the large-scale felling of trees were detained by the police. In 2022, 43 hectares of trees were cut. In the same area, 91 acres were cut in 2023.ⁱⁱ

The second phase of mining for PEKB will affect the Ghatbarra village, which will be “displaced entirely”. However, the Ghatbarra Gram Sabha has not given its consent for mining in the area as of today.ⁱⁱⁱ

In October 2021, hundreds of villagers from the Hasdeo Arand area had walked 300 kms to Raipur to protest against mining in the area. They had met then Chief Minister Bhupesh Baghel and Governor Anasuya Uikey. On 23 October 2021, the Governor wrote to the Chief Secretary to probe these fake consents. However, no enquiry has been done as to today.ⁱⁱⁱⁱ

On 26 July 2022, the Chhattisgarh assembly passed a unanimous resolution that mining activities will not be carried out in Hasdeo. In July 2023, the Chhattisgarh government submitted an affidavit to the Supreme Court, wherein it was stated that, aside from the PEKB project, there is no necessity to allocate or use any new mining reserve areas for mining in Hasdeo.^{liv} Yet, deforestation activities have now started.



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ii. Criminalisation of the acts to enforce the laws of the lands

A report by *Washington Post* published in June 2023 revealed that the Central Government is using central agencies like the income tax authorities, Enforcement Directorate and the Central Bureau of Investigation (CBI) against activists involved in the protests against coal mining in Hasdeo, with internal documents reportedly expressing anger over activists filing lawsuits, mobilising protestors and expressing public dissent. As per the report, one environmentalist was being accused of 'divulging internal information of India' and 'conspiring against Adani' for sharing details on the mining with British and Australian researchers.^{lv}

According to the report, tax officials simultaneously raided the offices of the Delhi-based think-tank Centre for Policy Research (CPR), the legal research non-profit LIFE and Environics Trust. The report further revealed that a senior coal ministry official in an interview stated the government's intent to get Hasdeo operational as soon as possible and called the derailment of the process as 'unacceptable'. Following the raids, lawyers belonging to the NGO LIFE, who were fighting a lawsuit on behalf of the locals in the forest, withdrew from the case.^{lvi}

B. Pathalgadi movement in Jharkhand

The Indigenous Peoples of India have been fighting for the protection of their collective right to self-determination, autonomy and identity, and for reclaiming their rights over land, territories and natural resources for centuries. The Pathalgari Movement, a powerful mass movement fighting for these rights that took place in the recent past, was criminalized and crushed by the Indian State because it had directly challenged Indian authorities. The Pathalgari movement is an autonomous self-determination resistance movement of the Munda Adivasis of Khunti district in Jharkhand that was formed to reclaim Indigenous Peoples' collective rights over their lands, territories, and natural resources. Presently, the movement has spread across the major central Indian states of Jharkhand, Odisha, Chhattisgarh and Madhya Pradesh.

Etymologically, Pathalgari means 'erection of a stone slab', where *patha* is a 'stone' and *gadi* means 'to erect it or fix it on the ground'. Thus, Pathalgari is an erected stone slab symbolising Adivasi customary rights, practices, beliefs and culture. Commonly, an entire village community is involved in erecting stone slabs in the village ceremoniously for different purposes, such as the preservation of the existence of ancestors, demarcation of a village boundary, displaying the history of the settlement for future generations, showing the existence of generations living on the land, and for memorialising a special event.

In recent decades, Pathalgari came into the limelight when the Provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA 1996) was enforced. The practice of erecting stone



plaques in villages was used to inscribe provisions of the Act to make Adivasis aware about their legal and constitutional safeguards. The Pathalgari movement used the Pthal to claim the supreme authority of traditional village councils.^{lvii}

The current phase of Pathalgadi movement started after then Bharatiya Janata Party Government in 2017 attempted to tweak Chhotanagpur Land Tenancy Act, 1908 and the Santhal Pargana Tenancy Act, 1949 to allow sell of tribal lands to non-tribals. This led to massive protests and the tribals of Khunti, Gumla, Simdega, Saraikela, West Singhbhum area started erecting stones in their villages with PESA provisions highlighting their rights which came to be known as Pathalgadi movement.^{lviii}

During the Pathalgadi movement, many villages saw people gathering from surrounding areas with bows and arrows to 'assert their rights'. In August 2017, it was claimed that a police officer was not allowed to leave a village by the villagers. In 2018, it was also claimed that former Khunti's MP Kariya Munda's bodyguards were abducted by Pathalgadi supporters, who in turn claimed that 'their people' were held by the police. This resulted in a crackdown leading to the death of a tribal, Birsa Munda – named after the freedom fighter. Following this, cases were registered against several villagers.^{lix}

The BJP led government heavily cracked down the Pathalgadi movement. The police had filed cases against about 200 named accused and more than 10,000 unnamed people. A total of 172 people were made accused, out of which police had sought prosecution sanction against 96 accused. Apart from sedition, accusations against them included 'attacking the police officers with weapons', 'Kidnapping officers or body guards of the MP with well-planned conspiracy', 'instigating locals to create hurdles equipped with local equipment without any information or permission', 'capturing the police station and snatching the weapons from the hands of police officers', 'creating an insecure situation, misbehaving with government officers', 'Provoking the people with their inflammatory speech against government and administration', 'creating obstacles in governmental progressive works and disturbed law and order'.^{lx}

After the change of government in December 2020, a committee was formed and in 30 FIRs, among the 19 cases in which sedition charge was invoked, the committee had recommended withdrawal of Section 124A (sedition) of Indian Penal Code.^{lxi} However, five cases registered in connection with the Pathalgadi movement in Jharkhand's Kunti district are still pending to be withdrawn.^{lxii}

3.4 Situation of Indigenous Women

The individual and collective rights of Indigenous women and girls are regularly denied or violated in private and public spaces. Sexual violence, trafficking, killing or being branded a witch, militarization or state violence, and the impact of development-induced displacement remain major issues faced by women and girls.



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The National Crime Records Bureau (NCRB) in its latest report “*Crime in India 2022*” published on December 3, 2023 recorded a total of 1,347 cases of rape against Indigenous women and girls in 2022.^{lxiii} The sexual assaults were perpetrated by both civilians and security forces/government officials.

On 18 July, a horrific video of two Indigenous women being paraded naked and sexually assaulted by a mob in Manipur amid the ongoing ethnic violence sparked nationwide outcry. In the video, the two Indigenous women were seen parading naked and some members of the mob groping private parts of the two victims as they were being led to a field, where they were gang-raped. The mob also killed two Indigenous men who tried to protect the women. The victims were reportedly abducted from police custody at B Phainom village in Kangpokpi district on 4 May, but the incident came to light only on 19 July. The police did not act after the first complaint was lodged on 18 May, and did not arrest the culprits even after the FIR was transferred to the nearest police station on 21 June. The first arrest was made on 19 July, 77 days after the assault and a day after the video of the incident went viral.^{lxiv}

In another gruesome case from Manipur, two Indigenous women, aged 21 and 24, were abducted, tortured, gang-raped and murdered by a mob of about 100-200 persons in state’s capital Imphal on 5 May. The mob dragged out the two from the shop where they worked and took them to a room, where they were tortured, gang-raped and killed. There was serious police inaction despite filing of complaint and a FIR registered. This case is also being investigated by the CBI.^{lxv}

Elsewhere, the trend of sexual violence against Indigenous women and girls continued both by security forces/government officials and non-tribals.

On 4 January 2023, a 30-year-old Indigenous woman was raped and murdered allegedly by forest officials in a forest in Bihar when she went to collect firewood.^{lxvi} On 15 June 2023, five Indigenous women from Tamil Nadu were allegedly subjected to sexual harassment and torture by six policemen in Andhra Pradesh after they were arrested in connection with crimes related to property offences.^{lxvii} On the night of 15 August 2023, a tribal woman was forcibly picked up, tortured and her modesty outraged by police in Hyderabad district, Telangana while she was returning from her brother’s home. The police claimed that the victim was brought to the police station for creating nuisance.^{lxviii} On 18 November 2023, a minor tribal girl was raped and physically assaulted by two Beat Constables of Forest Department in Madhya Pradesh. The victim was called at the forest outpost by the two accused on the pretext of cooking food for them.^{lxix}

3.5 Indigenous peoples are the largest group of IDPs in India

Indigenous Peoples are the largest group among the Internally Displaced Persons (IDPs) whether conflict induced or development induced. The government of India does not maintain the data on the IDPs.



A. *No Central government assistance to about 12,000 IDPs from Manipur sheltered in Mizoram*

In the conflict in Manipur between the Meiteis and Kukis that started on 3 May 2023 by December 2023, around 200 people were killed and more than 70,000 people displaced, including at least 10,000 children. Over 220 churches have been destroyed (though the United Christian Forum claims destruction of over 500 churches) and about 4,694 other properties have so far been destroyed. The capital, Imphal, has been cleansed of the Kukis, and the second largest town of Churachandpur has been cleansed of the Meitei. A few remaining Kuki families who were residing in Imphal's New Lambulane area were forcefully evacuated by central and state forces on the night of 2 September 2023. Approximately 5,600 weapons and 650,000 rounds of ammunition went missing from the State Armories. Both Kuki and Meitei communities have been armed to the teeth with weapons from various insurgent groups, including from neighboring Myanmar. Sporadic killings continued unabated. The State remained a mute witness.^{lxx}

The displaced persons from Manipur were forced to live in pitiable conditions with shortages of essential items, including food and medical supplies in the relief camps. On 1 September, the Supreme Court directed the Central and state governments to ensure basic supplies of food and medicine to the displaced people in Manipur after the Committee apprised the situation and found supply shortages in relief camps and an outbreak of measles and chickenpox.^{lxxi}

However, about 12,000 displaced Kukis who fled to Mizoram and have been living in deplorable conditions in relief camps due to the lack of assistance from the Central Government despite the requests of the Mizoram government.^{lxxii}

B. *No Central government assistance to about 50,000 IDPs displaced by the armed conflict in Chhattisgarh while many rehabilitation packages developed for the Kashmiri Pandits from Jammu and Kashmir*

Around 50,000 tribals from Chhattisgarh were forced to flee to Andhra Pradesh and Telangana due to the Maoist-Salwa Judum conflict in 2005. They live in deplorable conditions. The Special Rapporteur of the National Human Rights Commission, M. Madan Gopal made an investigation and in his report dated 30.01.2023 submitted the enquiry report confirming the allegations of forced evictions to be "true", molestation of four Guthi Koya women, merciless violations of human rights on unprecedented scale, abysmal poverty and denial of fundamental facilities, stopping of issuance of the Scheduled Tribes certificates of Guthi Koya Tribes without any official communications etc. and no response from the concerned authorities including the Chief Secretary on sharing of policy document that reflect the way and manner through which the field level officers handle the Guthi-Koya issue.^{lxxiii} The case is under adjudication and the NHRC also directed that without due process the tribals shall not be evicted.



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On the other hand, for about 62,000 registered Kashmiri Pandits, the upper caste Hindus, displaced from Jammu & Kashmir, the Government of India has been providing various assistances since 1990s. As per the Ministry of Home Affairs, Government of India, the following assistance is being provided:

“(c) Initially in the year 1990, the State Government of J&K, after registering migrant families, provided cash relief of Rs.250/- per family and free ration, which has been enhanced from time to time. At present, the cash relief has been enhanced to Rs.3250/-per head per month (maximum of Rs. 13,000/- per family per month) plus dry ration (9Kg Rice, 2 Kg. Atta per person per month and 1 Kg. Sugar per family per month) to eligible families living in Jammu. Expenditure incurred by the Govt, of Jammu & Kashmir in this respect is reimbursed by the Ministry of Home Affairs under Security Related Expenditure (Return 8s Rehabilitation)-SRE(R&R).

(d) The Government of NCT of Delhi is also providing cash relief of Rs.3250/- per head per month (maximum Rs. 13,000/- per family per month) to eligible families living in Delhi/NCR. Expenditure incurred by the State Government in this respect over and above Rs.1000 per head per month is being reimbursed by the MHA under the Security Related Expenditure (Return 85 Rehabilitation)-SRE(R&R). Other States are providing relief as per scales fixed by them from their own budget.

(e) Under Prime Minister’s Package-2004, a project for construction of 5442 Two Room Tenements (TRTs) at four locations (Purkhoo, Muthi, Nagrota and Jagati) with an estimated cost of Rs. 385.00 crore was sanctioned. In phase-I, 1024 TRTs were constructed at Purkhoo, Muthi and Nagrota and were allotted to Kashmiri migrants. In phase-II, 4224 TRTs were constructed at Jagti Migrant Colony, Jammu and were allotted to the Kashmiri migrants.

(f) A Comprehensive Package was announced by the Government in 2008 for return and rehabilitation of Kashmiri Migrants. Under this package, 3000 Government jobs have been provided to Kashmiri migrants and 721 Transit accommodations have been constructed in the Kashmir valley.

(g) Besides, the Government of India has approved another package, on 18th November 2015 for providing additional 3000 state government jobs to the Kashmiri migrants and construction of 6000 transit accommodations in the Kashmir valley. Till June, 2023, out of 6000 Govt, jobs, 2645 jobs have been provided to Kashmiri migrants and 880 Transit Accommodation have been constructed in Kashmir valley.”^{lxxiv}

The rehabilitation package for the Kashmiri Pandits, upper caste Hindus of Jammu and Kashmir vs-a-vis Indigenous Peoples displaced by the Maoists conflict in Chhattisgarh exposes the discriminatory policies of the Government of India towards various groups of citizens.^{lxxv}



3.6 The case for repeal of the AFSPA

The Armed Forces Special Forces Powers Act (AFSPA) remains in force in parts of Nagaland,^{lxxvi} Arunachal Pradesh,^{lxxvii} Assam,^{lxxviii} Manipur,^{lxxix} and Jammu and Kashmir.^{lxxx} The Act is draconian and Section 4(a) powers non-commissioned officers to “fire upon or otherwise use force, even to the causing of death”.^{lxxxii} It was severely censured by the UN Human Rights Committee during its previous concluding Observations in 1997.^{lxxxii}

The Ministry of Home Affairs, Government of India in its 2022-2023 Annual Report stated that “*The security situation in the North Eastern States has improved substantially since 2014. Compared to 2014, there has been 76% reduction in insurgency incidents in 2022. Similarly, in this period, Security Forces casualties have come down by 90% and civilian deaths by 97%. In 2022, a total of 201 insurgency related incidents registered in NE region in which 7 civilians and 2 Security Force (SF) personnel lost their lives. Counter Insurgency Operations led to neutralization of 6 insurgents, arrest of 563 insurgents and recovery of 279 arms in the region. A total of 2,023 cadres of various insurgent outfits of NE States surrendered with 394 arms and joined the mainstream of the society*”.^{lxxxiii} This calls for repeal of the AFSPA.

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