

Legal Clinics and Adivasi Rights

Report of a National Workshop

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A national workshop in Hyderabad deliberated on adivasi rights and the organisation of legal clinics, addressing the issues faced by the vulnerable communities among them.

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The Council for Social Development (CSD), Hyderabad, organised a two-day national workshop on “Legal Clinics and Adivasi Rights” between 31 January and 1 February 2012 as part of its long-term programme on adivasi rights. The workshop brought together a group of people from diverse backgrounds – academicians, advocates/lawyers, activists – with over half the participants coming from adivasi communities. Participants included M Ramanamma, who runs a “bridge” school for internally displaced Gutti Koya children from Chhattisgarh in Bhadrachalam, Joseph Bara from Jawaharlal Nehru University, Baharul Islam from NEF College of Law, Guwahati, Rajendra Sail, activist with the People’s Union for Civil Liberties and lawyer from Raipur, Bineet Mundu, activist from Jharkhand, Mallavarpu Rambabu, Smita Nayak from Utkal University, Tokala Guruvaiah from the Chenchu village Appapur, former distinguished bureaucrats K B Saxena

and B N Yugandhar, and lawyers Seema Misra and Abha Joshi from Delhi to mention a few. The participation of young lawyers from adivasi communities in Andhra Pradesh was particularly noteworthy.

The workshop had twin objectives – pedagogical and interventionist: first, addressing a gap in legal education that hitherto had no focus on the situation of adivasis, despite their presence in Schedules v and vi of the Indian Constitution, and a voluminous record of constitutional derogations that speak directly to law in its breach; second, focusing on building strategies and skills for youth within these communities, especially those who had studied law and those with a tertiary education that would enable effective intervention through courts and adjudicatory spaces. While all the participants had either exposure to rights advocacy or were rights educators themselves, this was the first time several of them were thinking of the possibility of community-based clinics or even of influencing the curriculum of clinical legal education in their respective areas. Or bringing a focus on adivasi rights to bear on law schools and building strategies to draw law students into community-based clinics through internship programmes and placements.

The representation of adivasis in public discourse historically has been responsible for policy thrusts that have either been assimilationist, integrationist or exclusionary. The perspectives of the communities in question therefore have not shaped law or policy in any substantial way, even while the latter were meant to uplift these communities. The absence of adivasis from the framework of legal education in India is particularly troubling. Joseph Bara dwelt at length on the difficulties of reorienting the development discourse to speak to adivasi lifeworlds. Freezing adivasis into static moulds, the liberal focus on the individual as the bearer of rights obstructs the conceptualisation of adivasi rights and therefore their actualisation, argued Bineet Mundu. While adivasi history has been one of struggle, there has been a gap in translating this into legal victories.

One of the key issues/problems that discussed at length in the workshop was that of forest and land rights of the adivasis. Of the many points that were discussed around this issue, four points are noteworthy. First, and one that Guruvaiah stated succinctly, was that the forest is central to the very existence of the adivasis. Livelihoods, religion, spirituality, culture and kinship are closely interwoven around the forest and its inhabitants. Far from being a negative reaction to imminent displacement or eviction, this is a positive statement of the right to liberty as being about the right to occupy the land of their ancestors undisturbed.

The second aspect concerns the encounters with the State over the forest and land rights – Joseph Bara pointed to the frequency with which enabling legislations like Panchayats Extension to Scheduled Areas (PESA) are watered down through counterproductive rules or non-implementation; and the efforts by communities to protect, regenerate and conserve forest resources, often in conflict with forest mafias, have led to their being labelled as encroachers in their homelands. The right to land and forest therefore was one that could only be asserted with the greatest difficulty, but as an indispensable first step to building legal strategies.

Third, the experiences of north-eastern states show that land is central to most

conflicts between and among the adivasi communities. What is significant about these conflicts, Baharul Islam noted, is that they are the direct consequence of development policies pursued by the state.

The fourth aspect concerns the negative impact of the nexus between the state and the corporate sector. While corporate law is taught in fair detail to students of law, corporate irresponsibility and wilful negligence especially with respect to communities under constitutional protection finds no mention at all in mainstream curricula. And if there is a mention at all, it is confined to courses on law and poverty. Bineet Mundu quoting the example of Chhattisgarh pointed to the dilution of the Chhattisgarh Tenancy Act to the advantage of corporate firms owned by the Jindals and the Tatas.

Many participants pointed out rather forcefully some of the negative effects upon the adivasis due to the developmental policies and programmes pursued by states across India. The present pattern of development is promoting a new form of dictatorship and is really only barely disguised deprivation for adivasis, who want justice and dignity. The Narmada Bachao Andolan slogan, *vikas nahi vinash hai yeh* (this is not development but destruction) tells the story of adivasi

encounters with development. Also telling is the destruction of biodiversity in adivasi areas of Chhattisgarh – which is now an embattled state – and has historically been a rice bowl with 22,742 varieties of indigenous paddy.

Forced migration has led to the aggravated marginalisation of adivasi women and their exploitation by labour contractors, especially in urban environments. Smita Nayak detailed the condition of adivasi migrants in Bhubaneswar.

In all areas adivasis are caught in the crossfire between the police-paramilitary-military forces on the one side, and Maoist/other armed movements on the other. Ramanamma's question, "when people from all communities migrate all over the country, why are only adivasis singled out by the police?" needs an answer.

Adivasi Rights' Clinics

The discussion on displacement and resettlement threw up a very interesting account of positive strategies for clinics. Mallavarapu Rambabu highlighted issues involved in development-induced displacement and inadequacies in the implementation of rehabilitation and resettlement measures for the welfare of the project-affected persons (PAP) of Kovvada Reservoir. He stated that most of the PAP were unaware about the construction of

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the dam and it was so unprepared to address the resettlement and rehabilitation. He had organised the PAP and started a campaign/agitation at the entrance of the Kovvada dam reservoir. In the end, after several rounds of negotiations, they managed to get land for land, and housing colonies with complete infrastructure – with homes and public facilities. The involvement of adivasi communities in the process of rehabilitation is critical.

The diversity within the category of scheduled tribes (STs) gives rise to contentious claims for reservation, which must be politically resolved, as we are already witnessing in the case of Malas and Madigas. There are two issues that are interrelated but distinct. The first has to do with inclusion of certain tribes in their schedule, which is prepared state-wise. Here, despite the fact that the Koyas from Bhadrachalam working in settlements of internally displaced people (IDP), like Ramanamma, may not see a difference between Gutti Koyas of Chhattisgarh and themselves, and while we need to recognise that boundaries of tribes are different from boundaries of states, concrete legal and administrative strategies need to be developed in close consultation with communities. There are instances where village revenue officers took a benevolent view of IDP families and issued them residence certificates if they had settled in the village, but there is little documentation of the creative use of powers by local-level officers and administrators who belong to these communities themselves. The second issue has to do with the gross under-representation of forest and primitive tribes and over-representation of *lambadas* in education and public employment in Andhra Pradesh. This debate on internal categorisation is a political debate that has yet to gain momentum among the STs.

The targeting of adivasis by Naxalites and police give rise to a high volume of cases related to compensation, murder of “informants,” arbitrary arrest, “bind over” cases, and random searches, that go completely unaddressed and have no legal redress.

The procedures and structures of the Indian legal system and the process of delivery of justice are entirely alien to the

traditional and customary justice delivery system, which relies on an oral culture. This is one aspect of legal pluralism. The second aspect is that while law is used to deliver rights, the adivasis have been deprived of rights. The adversarial system is, according to K B Saxena, a disaster where adivasis are concerned as it is only used to deliver injustice to them. Adivasis appear in law and before courts mostly as the accused. They are mostly unaware of the law and its ifs and buts. Therefore when they appear before the justice delivery authority, they have limited information to share, which is mostly restricted to their knowledge of their land and forests. This is where their ethos come into direct conflict with the written, rule bound systems of formal courts, putting them at a disadvantage.

To cite a concrete example, if an adivasi wants to report about a crime, she would prefer an oral complaint, which only states that a crime has been committed – adivasis who submit complaints will not get into the facts of the case but only state that such a crime has been committed. This information has to be translated into a written complaint. This is a critical exercise where the immediate injustice has to be turned into a complaint that should contain ingredients of violence and violations perpetrated against them. This is a task that a skilled and proactive legal clinic can accomplish. Given a situation where the interface between the adivasis and the non-adivasi continues to be exploitative of the adivasi, the latter’s thresholds as far as formal justice systems go, are very low. It is this that needs strengthening.

In general, the strategies used by non-adivasis in alienating land from the adivasis are by maintaining a friendly ambience and striking at the adivasis when they are most vulnerable and unaware, observed K B Saxena, drawing on his long experience. The non-adivasi will lie low during the limitation period of 12 years and collect all documents required. Once he has collected all documents and the period of 12 years is over the non-adivasi interpolates his name in all the records systematically and fraudulently. Once the revenue records are changed then there is very little the adivasi can do. It is important to identify the areas

of vulnerability – such as where there is huge alienation of land, where there is mining in particular and where there are issues related to migrant workers.

It is important that the persons who are involved in legal clinics have a deep understanding of the issues concerning adivasis and also able to deal with the external world. Legal clinics should run as multiple assistance clinics that are completely transparent and accountable with maximum participation from the adivasi communities in each area. The gram sabha is an institution uniquely poised to be the watchdog and custodian of community rights. But processes of transparency and accountability need to be strengthened. It is important to train adivasi youth who are able to speak the language of the adivasis and also understand their issues as para-legal workers who will pursue cases with the various agencies including the government officials and help in restoration of the land to the adivasis. The legal clinic can serve as a resource centre which provides information to lawyers and the adivasis and help them with the various court processes – and supports adivasi lawyers as far as possible in this endeavour. The appointment of adivasi lawyers as legal counsel in the Integrated Tribal Development Agencies in Andhra Pradesh has been tardy, despite the official recognition that they must be able to represent themselves.

There are 26 STs, B N Yugandhar pointed out, among whom there are no literate generations. Education should be given importance in the schedule areas. The state must ensure that the directive principles of state policy that promotes educational and economic interests of the weaker sections of the society especially the STs are upheld and they are protected from social injustice and exploitation. The community-based clinics will be in a position to audit disentitlements especially to education and health, and seek redress.

Legislations

The Forest Rights Act (FRA) has created a moral legitimacy and has protected the rights and interests of the adivasis. Similarly the PESA has been instrumental in conferring self-rule and original rights to

the adivasis in a traditional and customary manner. But the problem is that the PESA talks about the village. With more and more states recognising revenue villages, which are coordinated by the panchayat, the various state legislations including Andhra Pradesh under the PESA rules has divested all powers of the gram sabha, thereby distorting the tenets of the Act.

Even while the debate on redrafting PESA rules rages, an alternate mechanism for justice delivery is required. One possibility is to develop the *gram nyayalayas*, located in the scheduled areas, which address issues of land and water to go beyond this and work towards realising a range of rights and entitlements to adivasis. The participation of community members is critical for effective and sustainable development. The saying "nothing about us without us" should be applicable to all policies regarding adivasis. There is need to shift from a framework of social upliftment to the framework of rights. Bineet Mundu anticipated the future contribution of adivasi rights clinics in

developing a cadre of barefoot lawyers, who could, in his view, play a critical role when land distribution camps are being conducted within communities by addressing not just land rights but issues around it like inheritance, common property resources, accessing pattas and retrieving records from courts.

It is important to bridge the gap between law and practice, observed Abha Joshi, and also to be part of the processes of the government towards self-actualisation of the adivasis. In the areas where administrative processes are involved they must enhance quality and awareness in a programmatic way. Adivasi rights are dynamic and involved in a process of constant change in this fast changing world. This dynamism guides the search for legal solutions and establishing legal clinics. It is a fact that no one can actually be represented by another. In litigation the lawyer is a link between the court, legal system and the client. A departure, therefore, from the usual practice where a litigant abdicates everything to the lawyer, is

indispensable to this effort, and litigants must have a voice in the representation of their case. While designing any programme it is important to remember few issues/benchmarks and more importantly that choices are a right of every human being.

Although issues of land and forest are central, Seema Misra underscored the importance of recognising adivasis as citizens who bear the entire spectrum of rights under the Constitution. The focus of the legal clinics therefore need not only be on land and forest rights. The largest number of people in Chhattisgarh jails, for instance, belong to adivasi communities. The state remains the largest violator of rights here. Legal empowerment is a tool. Holding people accountable in the process is very important. Rather than restricting ourselves to protest alone, it is important that groups file complaints and push them even though it is a long process. There is a need for stronger engagements with lower courts. In the process those involved are empowered and this leads to sustainable change.



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The deadline for receiving the research proposal is **20th March 2012**