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# MINING AND TRIBAL LAND RIGHTS: WHAT DEVELOPMENT COSTS FOR INDIA'S MARGINALISED

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DISCUSSION PAPER

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## ABSTRACT

Scheduled Tribes are one of the most disadvantaged, marginalised groups in India. Traditionally dwelling in forests, land is the basis of not just their livelihood, but also their collective cultural identity. However, alienation of tribal populations from lands they have occupied for generations has become a common practice across the country. The development rhetoric is often used to justify acquisition of tribal forest lands. In this context, the paper aims to explore whether the development paradigm reconciles with the state's responsibility of social justice and inclusive growth.

## INTRODUCTION

The concept of development has undergone significant evolution in the recent past to move towards a 'rights-based approach'<sup>1</sup>. Reduction of poverty, which was previously seen as the end goal of all developmental programs, is now talked about in continuum with the need to protect the rights of those who are socially and politically vulnerable. Such an approach to development is often institutionalised by enacting laws that seek to correct historical injustices imposed on the poor.

Over 100 million tribal people live in India, which is the largest indigenous population in any country in the world (Census 2011). They occupy 22% of India's geographical terrain, spread across 26 states and 6 union territories<sup>2</sup> (Thekaekara 2019; *ibid.*). Traditionally dwelling in forests<sup>3</sup>, more than 90% of all tribal people across India live in rural areas and practise subsistence agriculture to support themselves (Hall et al. 2014). Tribal communities happen to be among the poorest and most disadvantaged groups in the country, with five out of every ten people belonging to a Scheduled Tribe falling in the lowest wealth bracket (Yadavar 2018; National Family Health Survey 2015-2016).

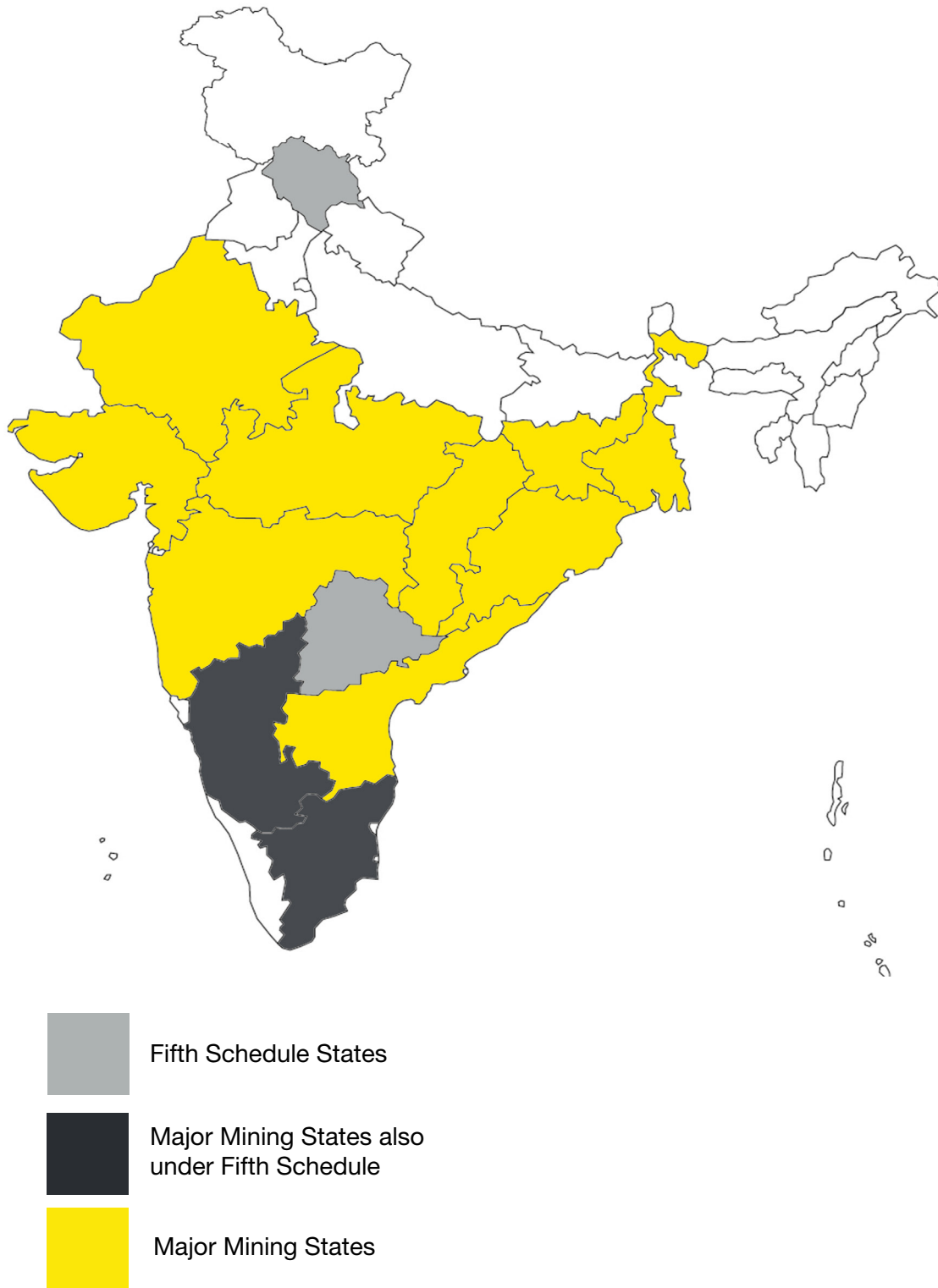
Interestingly, as can be observed from Figure 1, the states that have a preponderance of tribal populations also host major mineral reserves, often lying beneath India's richest forests and watersheds. As a consequence, mineral extraction is almost always not just environmentally disruptive but also results in large-scale development-induced displacement of the tribal population. It is this overlap that complicates matters by excluding total ban on mining in tribal areas, or even a temporary moratorium, as possible interventions to protect the rights of the local population. The government, then, has tried to establish a legal framework to delicately balance its two disharmonious objectives.

<sup>1</sup> The rights-based approach envisions the poor as actors with the potential to shape their own destiny and defines poverty as social exclusion that prevents such action. The rights-based approach seeks to identify the key systemic obstacles that keep people from accessing opportunity and improving their own lives (Center for Economic and Social Rights 1995).

<sup>2</sup> This data is from before the passing of the Jammu and Kashmir Reorganisation Act in October 2019, that bifurcated the erstwhile state of Jammu and Kashmir into two union territories: Jammu and Kashmir, and Ladakh. As per the Census 2011, the total population of Scheduled Tribes in the erstwhile state is about 1.5% of the total tribal population of the country. Most of these tribes are found in the Ladakh region (Sofi 2014). Following the Act, we do not have exact data on the percentage of tribal populations across the two new UTs.

<sup>3</sup> A traditional forest dweller is any member or community who has for at least three generations (a generation is measured as a period comprising of twenty-five years) prior to the 13th day of December, 2005 primarily resided in and depended on forest or forest land for bona fide livelihood needs.

# FIGURE 1: MINING AND TRIBAL POPULATION DISTRIBUTION IN INDIA



## LEGAL FRAMEWORK TO PROTECT TRIBAL LAND RIGHTS: A BRIEF OVERVIEW

In 1996, through the Panchayats (Extension to the Scheduled Areas) Act or PESA, the provisions of Panchayats was extended to Fifth Schedule areas<sup>4</sup>. The Act was revolutionary to the extent that it recognised the community-based decision-making rights of adivasis. It also placed customary laws of tribal communities and their traditional methods of managing natural resources on the same plane as state government laws.

This entire shift towards wider local governance hinged on powers of the Gram Sabha. Following the enactment of PESA, it became mandatory to consult with the Gram Sabha before acquiring land for any non-forestry activity. Gram Sabhas were also given a right to be consulted before rehabilitating persons displaced by such projects. However, taking a closer look at the role of Gram Sabhas, as envisioned under the Act, makes it apparent that the transfer of power stipulated was weak and vague. The Act played on the conceptually thin line between 'consultation' and 'consent', giving only an illusion of decentralised decision making. Similarly, securing mining leases in Scheduled Areas required merely seeking recommendations of the Gram Sabha. Usage of such ambiguous language in the Act allowed for licenses to be granted even if the recommendation of the Gram Sabha was negative in nature<sup>5</sup>.

In 2006, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act tried to redefine the state's relations with the tribal communities. Mandatory informed consent of Gram Sabhas for diversion of forest lands was introduced under the FRA. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act passed in 2013 also mandated the requirement of prior consent of the Gram Sabha for acquiring land in Scheduled Areas, even while recognising that such an acquisition should be made as a last resort. The Supreme Court further legitimised the power of the indigenous communities to provide or withhold consent for a developmental project in the highly controversial case of mining giant Vedanta Resources Industries by ruling in favour of the tribes of Niyamgiri Hills (Orissa Mining Corporation vs. Union of India and Ors. 2013<sup>6</sup>).

<sup>4</sup>The criteria for declaring any area as a "Scheduled Area" under the Fifth Schedule of the Constitution is not spelt out in the Constitution itself. They have, over time, been established as areas which have a majority presence of tribal population, with compactness and a reasonable size, with a viable administrative entity such as a district, block or taluk, and distinct economic backwardness as compared to the neighbouring areas. At present, 10 states, namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have Fifth Schedule areas.

<sup>5</sup> Under PESA, the Gram Sabha makes a recommendation regarding the proposed land acquisition and submits a rehabilitation and resettlement plan for persons who will be affected by the same to the Land Acquisition Officer. In case the Officer does not agree with the recommendations made by the Gram Sabha, she/he can forward the matter again to the Gram Sabha for its reconsideration. Regardless of the Gram Sabha's revised decision, the Officer and the project authorities can pass an order against the recommendations of the Gram Sabha, after recording the reasons for the same and communicating them to the Gram Sabha.

<sup>6</sup> More information on the Supreme Court judgement is available here: [https://www.fra.org.in/ASP\\_Court\\_Cases\\_UploadedFile/%7B55233dc5-b38a-4c53-9228-00a2b8d19034%7D\\_Briefing\\_note\\_on\\_vedanta\\_judgment\\_April\\_18\\_2013.pdf](https://www.fra.org.in/ASP_Court_Cases_UploadedFile/%7B55233dc5-b38a-4c53-9228-00a2b8d19034%7D_Briefing_note_on_vedanta_judgment_April_18_2013.pdf)

However, since the enactment of FRA, the Ministry of Environment, Forest and Climate Change, through various notifications and orders, has tried to pull back on the rights extended<sup>7</sup>. For instance, in 2013, the need to secure consent of the Gram Sabha was revoked in cases of linear projects such as laying of roads and bridges. In 2018-2019, the Ministry also withdrew the requirement of compliance with the FRA during the first stage of securing 'in-principle' forest clearances. As per this, consent of the Gram Sabha could be sought later during the final clearance stages, effectively carrying little significance as projects by this time have already made considerable headway. In several instances, the Ministry also approved diversion of forest lands in favour of mining activities despite strong opposition from tribal assemblies of the area (Chaudhary 2019; Sethi 2016).

Organisations working towards the welfare of tribal communities have reported on a multitude of cases where legal processes have been compromised. Local officials, including District Collectors, have resorted to practices such as forged signatures and manufactured documents indicating consent. In some instances, researchers have uncovered Gram Sabha resolutions passed in strong opposition to a mining proposal, however, the proposals have been approved after recording false consent (Chaudhary 2019; Kunjam 2020). Reports have also emerged indicating that meetings with Gram Sabhas to seek their approval are often held in the presence of armed police forces, which directly contradicts the principle of free will (Ratho 2007).

## MINING INDUCED DISPLACEMENT AND THE NEED TO REVISIT MINING POLICIES

Mining laws and policies of India, much like those governing land and forests, have their essence rooted in a predatory form of resource extraction. Even though there is no recent official data to quantify mining activities in Scheduled areas, in 1991 it was reported that out of the total of 4,175 operational mines in the country, 3,500 were situated in areas inhabited by tribal communities (Bijoy 2001). Reading Table 1, Figure 2 and Figure 3 in synergy provides an insight into the fact that a vast expanse of forest land is cleared even if only 10-12% of all mining proposals submitted are approved in a year.

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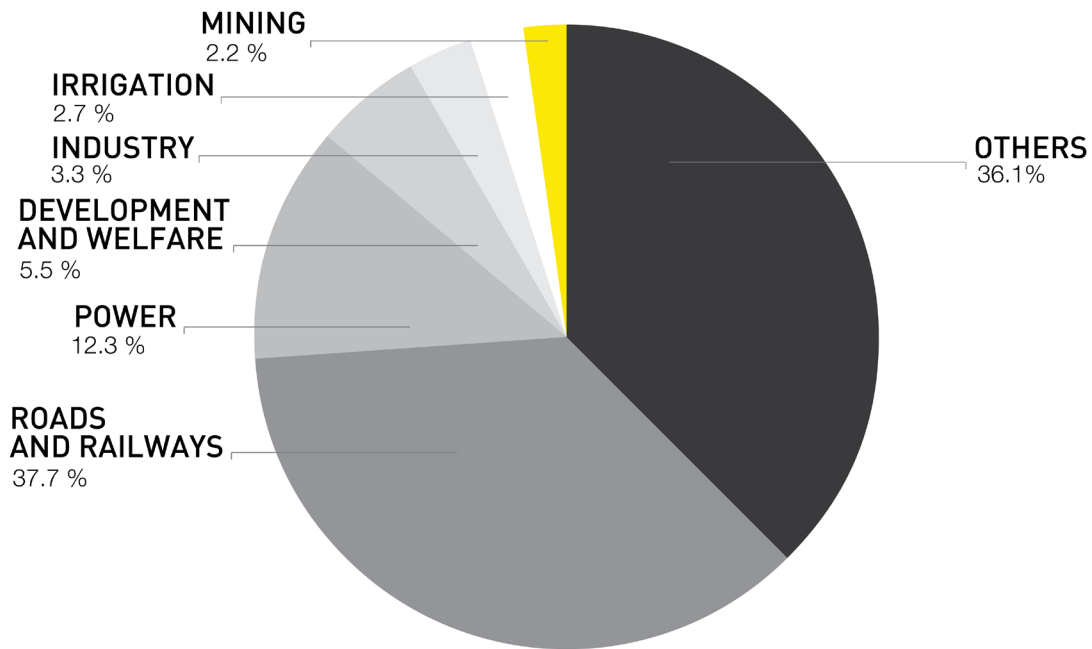
<sup>7</sup> A complete timeline of such notifications issued can be accessed here: <https://forestrightsact.com/corporate-projects/timeline-of-attempts-to-sabotage-forest-rights-for-large-projects/>

TABLE 1: DETAILS OF PROPOSALS SEEKING APPROVAL FOR DIVERSION OF FOREST LAND FOR MINING ACTIVITIES UNDER THE FOREST (CONSERVATION) ACT, 1980 RECEIVED FROM VARIOUS STATE GOVERNMENTS BY THE MOEF&CC DURING 2015 - 2018) AS ON 13.12.2018

| States/UTs           | Total proposals received | Number of proposals approved | Forest area diverted (in ha.) |
|----------------------|--------------------------|------------------------------|-------------------------------|
| Andhra Pradesh       | 10                       | 5                            | 16.16                         |
| Arunachal Pradesh    | -                        | -                            | -                             |
| Assam                | 3                        | 0                            | 0                             |
| Bihar                | -                        | -                            | -                             |
| Chhattisgarh         | 25                       | 5                            | 500.09                        |
| Dadra & Nagar Haveli | -                        | -                            | -                             |
| Daman and Diu        | -                        | -                            | -                             |
| Delhi                | -                        | -                            | -                             |
| Goa                  | -                        | -                            | -                             |
| Gujarat              | -                        | -                            | -                             |
| Haryana              | -                        | -                            | -                             |
| Himachal Pradesh     | 4                        | 1                            | 2.18                          |
| Jharkhand            | 14                       | 2                            | 172.71                        |
| Karnataka            | 16                       | 0                            | 0                             |
| Kerala               | -                        | -                            | -                             |
| Madhya Pradesh       | 38                       | 2                            | 443.13                        |
| Maharashtra          | 24                       | 4                            | 2.65                          |
| Manipur              | -                        | -                            | -                             |
| Meghalaya            | 3                        | 0                            | 0                             |
| Mizoram              | -                        | -                            | -                             |
| Odisha               | 74                       | 9                            | 3014.56                       |
| Punjab               | -                        | -                            | -                             |
| Rajasthan            | 3                        | 0                            | 0                             |
| Sikkim               | -                        | -                            | -                             |
| Tamil Nadu           | 1                        | 0                            | 0                             |
| Telangana            | 6                        | 0                            | 0                             |
| Tripura              | 14                       | 0                            | 0                             |
| Uttar Pradesh        | -                        | -                            | -                             |
| Uttarakhand          | 2                        | 0                            | 0                             |
| West Bengal          | 1                        | 0                            | 0                             |
| Total                | 238                      | 28                           | 4151.48                       |

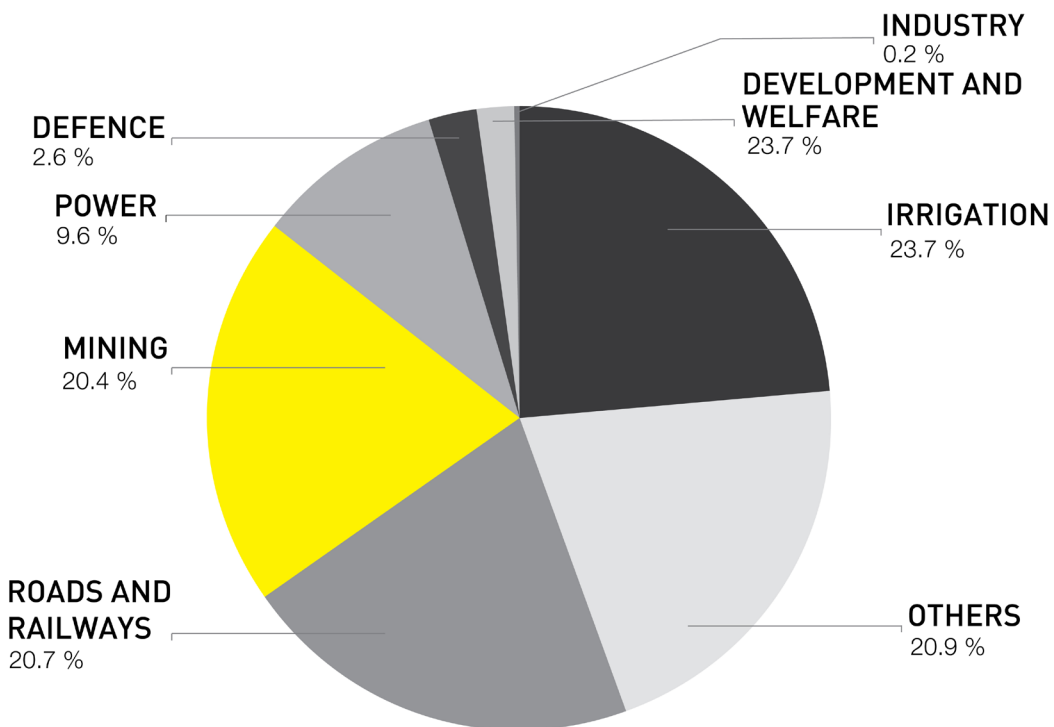
SOURCE: MOEF&CC, GOVERNMENT OF INDIA 2018

### FIGURE 2: DETAILS OF DIVERSION OF FOREST LAND - NUMBER OF PROPOSALS APPROVED



SOURCE: MOEF&CC, GOVERNMENT OF INDIA 2018

### FIGURE 3: DETAILS OF DIVERSION OF FOREST LAND - FOREST AREA DIVERTED (IN HA.)



SOURCE: MOEF&CC, GOVERNMENT OF INDIA 2018



The Mines and Mineral (Development and Regulation) Act of 1957, which is the primary legislation regulating the mining sector, refers to traditional forest dwellers as “occupier of the surface of the land”, even while never explicitly using the terms ‘tribal’ or ‘adivasi’ (Ministry of Mines 2017: 37). Thus, ownership of minerals lying under the land is taken away from its traditional dwellers and placed with the state. Furthermore, the Rules framed under the Act to govern the process of acquisition make it clear that if the “occupier of the surface” refuses consent, and the state government finds the amount offered as compensation to be fair, the state government can “order the occupier to allow the licensee/licensees to enter upon the said land and carry out such operations” (Ministry of Mines 2017: 62). This provision has been repeatedly used to bypass the objections of the local populations and put into effect their illegal eviction<sup>8</sup>.

Not only does the Indian state have a monopolistic ownership over minerals, it has also been evidently reluctant in sharing the mining wealth with the tribal population. Under PESA, only control over minor minerals, which by definition excludes all metallic minerals and only includes minerals of least economic value such as clay, was handed over to the Gram Sabha. Neither the mining laws nor the National Mineral Policy recognises resource rights of the tribal people or accommodates their demands for a stake in the mineral wealth of their region<sup>9</sup>.

Part of the problem also lies in the complete lack of accountability demanded from industries. Mining companies seldom generate gainful employment for the local population, bringing in labour from neighbouring states and further disrupting the social ecology of the region. People living on these lands, if not evicted, are pushed further into the trap of poverty and deprivation by working petty jobs for these companies and transforming into debt-bonded mine labourers (Ratho 2007).

Policy failure is also apparent in the extremely low pricing of these minerals when sold as raw materials for the manufacturing sector. The cost of compensation and rehabilitation is inadequately factored in. It might also be time to re-evaluate the framework based on a ‘mining lease’, which by definition indicates an obligation to restore the land to its natural state and transfer the rights back to its original owner upon completion of mining activity. However, even though mining does not result in permanent damage to the land, the extent of degradation along with the level of contamination of soil and water makes the prospects of transforming a post-mining land into farmland unprofitable. The burden for the sustainable transformation of an ex mine also falls disproportionately on the people rather than the mining industry.

The justification for prioritising industrial growth at the cost of the marginalised seems unconvincing in the context of the underwhelming economic performance of the mining sector. Even as the industry moves towards greater privatisation with an intent to attract large foreign direct investments, its contribution to the GDP in the last decade has remained stagnant at a mere 2-2.5% (Trading Economics n.d.)<sup>10</sup>. The 12th Five Year Plan, approved in 2012, contested that for every 1% increase in India’s economic growth, the mining sector generates 13 times more employment when compared to the agricultural sector and 6 times

<sup>8</sup> Cases in which forest department officials set forest dwellers’ houses on fire and razed their crops have been reported in the states of Assam, Rajasthan, Madhya Pradesh and Gujarat (Kumar and Kerr 2012).

<sup>9</sup> The National Mineral Policy makes a weak, indefinite recommendation that the local tribal population should be given preference while granting mining leases. However, the recommendation is only made in the cases of small, scattered deposits of minerals.

<sup>10</sup> Despite a strong push towards inviting private large-scale players into mining, currently over 75% of total mining production in India is dominated by a large number of small mines operated by the public sector.

more employment than the manufacturing sector (Sharma 2019). However, comparing the percentage of workforce employed in the mining industry at the beginning of the Plan period to the end of the period (Table 2), makes it apparent that we have failed to capitalise upon the growth potential of the sector.

**TABLE 2: PERCENTAGE OF WORKERS IN THE MINING AND QUARRYING INDUSTRY**

| <b>Category of worker</b> | <b>2011-2012</b> | <b>2017-2018</b> | <b>Status</b> |
|---------------------------|------------------|------------------|---------------|
| Rural male                | 0.5              | 0.5              | Stagnant      |
| Rural female              | 0.3              | 0.2              | Decrease      |
| Urban male                | 0.9              | 0.6              | Decrease      |
| Urban female              | 0.3              | 0.2              | Decrease      |

SOURCE: PLFS 2017-2018

## CONCLUSION

By regulating land as a mere market commodity, the state has continually disrespected the deeply symbiotic relationship between tribal communities and their lands. Tribal people constitute 55.16% of the total displaced population in India (PRS India n.d.). Having no legal ownership to the land they inhabit leaves them without the option to generate investments into their land and extract an income. They cannot apply for loans from public sector banks or secure electricity, water, irrigation or road connections. As can be observed in Table 3, in several states a majority of the applications filed by tribal communities for land titles are rejected.

It is also important to realise that even if the FRA were to be stringently enforced, special attention needs to be given to community-based rights. Granting individual forest rights only enables landowners to secure their livelihoods, leaving India's vast landless population, including nomadic, pastoral and other pre-agricultural communities, without any protection. It is only when community titles are allotted that these groups can support themselves by accessing forest resources. Table 3 highlights the government's abysmal record in the same.

TABLE 3: DETAILS OF CLAIMS RECEIVED FOR TITLES UNDER FRA, 2006 (UPTO 30.04.2018)<sup>11</sup>

| State            | Number of claims received - Individual | Number of claims received - Community | % of claims rejected - Individual | % of claims rejected - Community |
|------------------|--|---------------------------------------|-----------------------------------|----------------------------------|
| Andhra Pradesh   | 170437                                 | 4043                                  | 41.16                             | 66.06                            |
| Assam            | 148965                                 | 6046                                  | 61.51                             | 75.57                            |
| Bihar            | 8022                                   | 0                                     | <b>98.49</b>                      | 0                                |
| Chhattisgarh     | 856150                                 | 31515                                 | 53.49                             | 42.31                            |
| Goa              | 9758                                   | 372                                   | <b>99.82</b>                      | <b>97.80</b>                     |
| Gujarat          | 182869                                 | 7187                                  | 54.23                             | 51.07                            |
| Himachal Pradesh | 2053                                   | 170                                   | <b>93.71</b>                      | <b>95.88</b>                     |
| Jharkhand        | 105363                                 | 3667                                  | 44.90                             | 43.00                            |
| Karnataka        | 275446                                 | 5903                                  | <b>94.67</b>                      | 76.18                            |
| Kerala           | 36140                                  | 1395                                  | 31.93                             | NA                               |
| Madhya Pradesh   | 577472                                 | 39618                                 | 61.54                             | 31.14                            |
| Maharashtra      | 352950                                 | 11408                                 | 69.71                             | 49.61                            |
| Odisha           | 609164                                 | 13712                                 | 31.82                             | 52.88                            |
| Rajasthan        | 73455                                  | 704                                   | 49.19                             | 86.93                            |
| Tamil Nadu       | 34302                                  | 803                                   | 88.93                             | 71.98                            |
| Telangana        | 183252                                 | 3427                                  | 48.90                             | 77.93                            |
| Tripura          | 200358                                 | 277                                   | 36.59                             | 80.14                            |
| Uttar Pradesh    | 92520                                  | 1124                                  | 80.85                             | 25.00                            |
| Uttarakhand      | 3574                                   | 3091                                  | <b>100</b>                        | <b>100</b>                       |
| West Bengal      | 131962                                 | 10119                                 | 66.32                             | 93.22                            |
| <b>Total</b>     | <b>4054212</b>                         | <b>144581</b>                         | <b>55.68</b>                      | <b>51.47</b>                     |

SOURCE: MINISTRY OF TRIBAL AFFAIRS, GOVERNMENT OF INDIA 2018

Particularly concerning is also the fact that the Indian government has not ratified international conventions and protocols on the rights of indigenous people, blocking them from seeking protection under international laws<sup>12</sup>. Such attempts of the Indian government to, time and again, truncate the rights of the tribal population have marked similarity to an aggressive form of colonisation.

The only way to achieve reconciliation between the mining industry and the indigenous communities is through their empowerment. To build a relationship based on trust, community engagement in mining operations and their recognition as stakeholders is crucial. Such a move will not be unprecedented. The UPA government in 2010 had tried to bring about an amendment mandating allotment of free shares of the mining

<sup>11</sup> The Supreme Court, in an order dated 13th February 2019 (revisited on 26th February 2019), issued a direction to all state governments to evict anyone whose forest rights claims have been rejected, as they are now to be regarded as 'encroachers'.

<sup>12</sup> India has not ratified the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007. In fact, the government rejects the very term 'indigenous peoples', insisting that since independence, all Indians are indigenous and thus, any reference to rights of indigenous people to autonomy, self-governance or self-determination becomes void.

company to persons holding traditional rights over the surface land (Karat 2015). Even before that, in 2004, the Supreme Court had ruled that mining should only be allowed in tribal districts if locals are made owners, or at the least, majority stakeholders, of the mine. However, these attempts have not resulted in anything concrete.

Thus, the state and industry must aim to improve the social license of mining operations. Conflicts with the local tribes must not be perceived as disruptive, posing a threat to the country's pace of development. Only a transformative change in the nexus of the government, the mining industry and the traditional land owners will push India's economic activity towards stability.

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