

**MINING OPERATIONS, INDIGENOUS RIGHTS, AND DEVELOPMENT:  
UNRAVELING THE CHALLENGES FACED BY ADIVASI COMMUNITIES IN  
NIYAMGIRI**

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***Abstract***

*The present article undertakes an exploration of the confluence between development, indigenous rights, and mining operations, with a specific emphasis on the Adivasi communities situated in Niyamgiri, Odisha, India. This study delves into the intricate dynamics that ensue when conventional indigenous territories intersect with the proliferation of mining endeavours. The present study delves into a crucial facet of discourse, namely the entitlement to provide informed consent within the context of Adivasi communities. Frequently, the vocal expressions and capacity for action of affected individuals are eclipsed by the dominant interests that propel mining enterprises. The present study rigorously scrutinises the economic and social determinants that underpin the mining sector, thereby elucidating power dynamics and structural disparities.*

*In this article, the author examines the evolution of the legal framework pertaining to the recognition and enforcement of the right to consent within different stages of India's developmental trajectory and the implementation of this entitlement within the political-economic framework of the mining sector in India.*

**I. INTRODUCTION**

The rationalisation of land acquisition by the government of Odisha, a state rich in mineral resources situated in the eastern region of India, has been posited as an intrinsic element of the developmental trajectory. The conflict that has emerged as a result of the disparate interests held by the Adivasi populations, mineral corporations, and the state has significantly influenced the trajectory of India's ongoing discourse on economic development. The present discourse serves as an illustrative instance of the overarching obstacles faced by a multitude of developing nations. The aforementioned challenges encompass a diverse array of considerations, encompassing the imperative to strike a harmonious equilibrium between

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developmental pursuits and democratic ideals, reconcile the tenets of environmental and human rights norms with the process of deregulation, and grapple with the ramifications of swift expansion in conjunction with the exacerbation of societal disparities.

The legal jurisprudence, the underlying cause of this conflict, underwent a significant transformation in 2013. This jurisprudential transformation was set forth by a Judgement of Supreme Court acknowledging the rights of Adivasi Communities to provide their consent under the FRA 2006. Subsequently, an amendment was introduced to the colonial Land Acquisition Act of 1894, stipulating that the acquisition of land the mandatory assent of proprietors. This new amendment was a significant development in the recognition of rights of indigenous communities as the right to consent of Adivasi groups was not granted prior to 2013<sup>44</sup>. India is one of the countries with a rich and diverse Forest dwelling community. Currently, more than 200 Million people rely on forest or forest produce to sustain their livelihood<sup>45</sup>. But at this critical Juncture of balancing between modernisation and sustainable development, India's forests are facing a significant and contentious issue. This issue revolves around the inadequate involvement of forest-dwelling communities in decision-making processes regarding the acquisition of forest land. This has led a way for the acquisition of these lands rich in ancient traditions for exploitation of its resources and eventually, the displacement of its original inhabitants. The acknowledgment of the entitlement to prior, informed consent has resulted in this deficiency.

The legal obligation of obtaining prior, informed consent necessitates that in cases of land acquisition, the Gramme Sabha (village assembly) is the sole authority to collectively formulate a resolution to either accept or reject said acquisition. If the Gramme Sabha Rejects the said acquisition, the administrative authority, the Forest Advisory Committee, which is a central-level committee responsible for making decisions about the diversion of forest land, must consider the rejection prior to releasing property to the mining firm. The allocation of land to a mining company can proceed even if first rejected by the village assembly, contingent upon engaging in a negotiating process that ultimately convinces the assembly that the conditions necessary for granting approval have been satisfied. This research focuses on the influence exerted by the decision made by the Gramme Sabha on the terms and conditions

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<sup>44</sup> Jairam Ramesh and Muhammad Ali Khan, *Legislating for Justice: The Making of the 2013 Land Acquisition Law* (Oxford University Press 2015)

<sup>45</sup> Suraj Harsha & Sushmita 'Fending for Themselves – Adivasis, Forest Dwelling Communities and the Devastating Second Wave of COVID-19' (*The Hindu Centre*, 24 March 2023) <<https://www.thehinducentre.com/the-arena/fending-for-themselves-adivasis-forest-dwelling-communities-and-the-devastating-second-wave-of-covid-19/article66640859.ece>> accessed 6 November 2023.

governing the state's ultimate determination to allocate land for mining purposes. The present analysis posits that the determination at hand is influenced by the prevailing framework of development adopted by the state, the political and economic dynamics surrounding the mining sector, the manner in which legal mobilisation is undertaken, and the specific mining corporation implicated in the contentious situation.

## **II. DEVELOPMENT THROUGH DEMOCRACY – ANALYSING THE INTERPLAY OF GOVERNANCE AND PROGRESS**

The development of India can be analysed from two distinct perspectives: one that highlights its notable achievements and substantial economic growth, and another that emphasises the escalating levels of inequality inside the country<sup>46</sup>. The interplay between democracy and development is intricately intertwined with the historical process of earlier regimes of dispossession facilitated by colonial forest and land laws, which have undergone subsequent modifications. The concept of accumulation by dispossession serves as a pertinent and insightful point of departure for the analysis presented in this tale.

The examination of the interplay between democracy and development in India holds significant importance in comprehending the nation's political economy. The conception of the state has experienced a shift, shifting from an emphasis on development to a more nebulous classification, while still displaying characteristics that are often associated with a developmental state combined with a neoliberal agenda. This change occurred as the state moved away from an emphasis on development and towards a more ambiguous categorization. We will have the chance to build the framework within which the idea of consent functions as a result of the dynamic growth of the state, which will give us with this possibility. In certain contexts, the pursuit of developmental objectives may take precedence over democratic principles and ideals, but in other contexts, democratic principles and ideals may be given more weight. The concept of prior and informed consent is situated in the context of balancing the democratic expression through active participation in decision-making and the developmental goals of the Indian government. This framework is positioned within the backdrop of the Indian government's efforts to improve the country's healthcare system.

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<sup>46</sup> David Harvey, *The New Imperialism* (Oxford University Press 2005)

The development of India may be divided into four periods where law has played a pivotal role in facilitating the realisation of these growth models<sup>47</sup>.

- a. Economic nationalism
- b. Strategic and limited deregulation to accommodate international investment
- c. Liberalisation, initiated by structural adjustment in 1991 and
- d. Deregulation and World Bank ease-of-doing-business measures followed in 2014.

### **III. EASE OF DOING BUSINESS IN THE ERA OF MODINOMICS**

The ongoing (fourth) phase of development, commonly referred to as Modinomics under the leadership of Prime Minister Narendra Modi, represents a continuation of heightened liberalisation efforts aimed at further expanding the economy. The sectors which were formerly under national ownership are currently being made accessible to foreign direct investment<sup>48</sup>. In February 2018, the Cabinet Committee on Economic Affairs made an announcement regarding the privatisation of coal and the promotion of foreign investor involvement in this industry<sup>49</sup>.

The concurrent process of liberalisation that follows this transformation can be regarded as a novel manifestation of economic nationalism. The current manifestation of economic nationalism involves the collaboration of foreign direct investment with Indian commercial entities through strategic alliances<sup>50</sup>. The “Make in India” initiative refers to a series of economic reforms that have been put forth by the government led by Prime Minister Modi. The primary objective of these reforms is to enhance domestic manufacturing and promote industrialization within the country<sup>51</sup>. These reforms, that are being undertaken in collaboration with the World Bank, are being implemented to reduce regulations pertaining to labour, environmental, and social norms and foster a Capitalist Economy<sup>52</sup>.

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<sup>47</sup> Kanchi Kohli and Debayan Gupta ‘Mapping Dilutions in a Central Law’ Centre for Policy Research-Namati Environmental Justice Program (2022) 1 Heinrich Böll Stiftung <<https://cprindia.org/workingpapers/mapping-dilutions-in-a-central-law-2/>> accessed 7 November 2023.

<sup>48</sup> Jagannath P. Panda, ‘Narendra Modi and his mode of governance’ (2016) 9(2) Journal of Asian Public Policy <https://www.tandfonline.com/doi/epdf/10.1080/17516234.2016.1165444?needAccess=true> accessed 31 January 2024

<sup>49</sup> PIB, ‘Year End Review- 2018: Cabinet & CCEA’ (Press Information Bureau, Govt. of India, 14 December 2018) <<http://pib.gov.in/PressReleaseDetail.aspx?PRID=1555914>> accessed 7 November 2023.

<sup>50</sup> Jagannath P. Panda, ‘Narendra Modi and his mode of governance’ (2016) 9(2) Journal of Asian Public Policy <https://www.tandfonline.com/doi/epdf/10.1080/17516234.2016.1165444?needAccess=true> accessed 31 January 2024

<sup>51</sup> Satya Narayan Misra, and Sanjaya Ku. Ghadai, ‘Make in India – The manufacturing conundrum’ (2016) 2(1) People: IJSS <<https://grdspublishing.org/index.php/people/article/view/476/427>> accessed 31 January 2024

<sup>52</sup> C. Bajpae, ‘Modi, India and the emerging global economic order’ [2016] 9(2) Journal of Asian Public Policy 198

India's Planning Commission was abolished in 2014. It was abolished to promote cooperative federalism and subnational government economic decision-making. The National Institute for Transforming India (NITI Aayog) replaced the old system as a think tank that advises federal and subnational governments on development<sup>53</sup>.

During this stage, the collaboration between the government and the business elite has been reinforced through the utilisation of a partnership model for foreign direct investment. This model serves as a framework for facilitating the movement of global capital, with a particular emphasis on the extractive industry.

Another significant phenomena within the context of this emerging kind of economic nationalism involves a heightened level of examination and critique towards civil society. This scrutiny arises from the perception that individuals and groups within civil society who oppose developmental goals are being stigmatised as elements that are against the nation. Moreover, there have been inquiries about the legislative progressions concerning the right to consent, as it has been argued that this right poses a hindrance to the achievement of national developmental goals, such as the FDI Goals and Make in India initiative.

The prevailing pro-business development model aims to transition the state's role from an active participant in the industrial and service sectors to a facilitator, utilising legislation, policymaking, and regulation to bolster business operations<sup>54</sup>. The principle of "minimum government and maximum governance" is articulated in the founding text of the NITI Aayog. This phenomenon indicates a shift in the state's approach towards the direct provision of economic services and goods, while simultaneously reinforcing its involvement in defining the future narrative of progress as a facilitator.

The contemporary manifestation of the developmental state entails the utilisation of the state's legislative, executive, and regulatory capacities to facilitate economic expansion and support entrepreneurial endeavours, while refraining from direct engagement in commercial operations.

#### **IV. DISPOSSESSION REGIMES IN INDIA: UNRAVELING LAND AND RESOURCE DEPRIVATION**

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<sup>53</sup> Cabinet Secretariat Resolution [2015] No. 511/2/1/2015

<sup>54</sup> *ibid.*

The transformation of land laws and the subsequent processes of dispossession play a crucial role in India's developmental narrative. Examining the subject from this perspective allows us to observe a transition in the legal framework, wherein the emphasis has shifted from landowner consultation to obtaining assent.

Regime of dispossession is defined as

*An institutionalised method of appropriating land from its existing owners or usage. The concept under consideration comprises of two fundamental elements: firstly, the presence of a government that is inclined to deprive individuals of their possessions in order to serve certain economic objectives that align with particular class interests; and secondly, the establishment of mechanisms to ensure that individuals comply with this process of dispossession. These two characteristics are inherently interconnected.*<sup>55</sup>

The state's willingness to participate in dispossessions is a difficult compromise between its developmental goals and democratic concerns. The aforementioned aspects have evolved through different periods of development, in tandem with the relevant laws that permit such deprivation. The legal changes imply a gradual shift away from asking community participation and towards getting approval, but with a probable diminution in its relevance. The idea of dispossession suggests a form of forceful redistribution that accomplishes diverse objectives and caters to the interests of various social classes at different junctures. However, the amount to which this contributes to economic change and the promotion of the "public interest" is not only controversial, but also politically contentious.<sup>56</sup>

## **V. FACILITATING BUSINESS OPERATIONS AMIDST THE DISPOSSESSION REGIME**

The first legislative change made under the ease of doing business phase concerned land laws, namely the repeal of the permission clause established in the Land Acquisition Act of

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<sup>55</sup> Michael Levien, 'From primitive accumulation to regimes of dispossession: Six theses on India's land question' [2015] 50(22) EPW 146

<sup>56</sup> *ibid.*

2013. This action was carried out by a legislative legislation. The Land Ordinance, as it has come to be known, was met with considerable resistance from farmers, Adivasis, and lower caste groups that depend heavily on land, not only for living, but also for livelihood. The contentious ordinance was eventually defeated, although changes were made to the relevant land law at the subnational level<sup>57</sup>.

While this phase aims for a reduction in the state's involvement in economic activity, it is important to note that this transition will not go well with land acquisitions. It is in the best interest of the public that the state should retain its role as the intermediary in land transactions. Insufficiently defined land ownership rights in India could obstruct companies from acquiring large land parcels if smaller disputed ones interfere with their endeavours<sup>58</sup>. The resolution of this uncertainty could be achieved through the active involvement of the state in land acquisition, particularly in cases where the project not only brings in FDI, but also serves a greater public purpose. This assignment of significance to a project is something that is best left to the State's discretion.

It's important to highlight that the mandated consent under the FRA 2006 was diluted by a notification that exempted linear projects like roads, highways, and pipelines from the consent requirement<sup>59</sup>. The issue of obtaining approval for mining operations gained prominence when the district administration in Chhattisgarh revoked the forest rights previously granted to Adivasi groups in order to facilitate coal mining activities. Legal mobilisation occurs within a contentious environment, wherein the use of international law may be pursued in cases involving multinational corporations or international investments.<sup>60</sup>

## **VI. JURISDICTIONAL LEAPFROGGING AND LEGAL PLURALISM: INSIGHTS FROM THE VEDANTA CASE**

*We live in an era of porous legality, or legal porosity, with many networks of legal orders compelling us to transition and trespass on a regular basis. Our legal*

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<sup>57</sup> Kanchi Kohli and Debayan Gupta 'Mapping Dilutions in a Central Law' Centre for Policy Research-Namati Environmental Justice Program (2022) 1 Heinrich Böll Stiftung <<https://cprindia.org/workingpapers/mapping-dilutions-in-a-central-law-2/>> accessed 7 November 2023.

<sup>58</sup> A. Panagariya, 'Land acquisition: Rationale and the way forward' (NITI Aayog) <[http://niti.gov.in/writereaddata/files/document\\_publication/NITIBlog5\\_VC.pdf](http://niti.gov.in/writereaddata/files/document_publication/NITIBlog5_VC.pdf)> accessed 7 November 2023.

<sup>59</sup> Priscilla Jebaraj, 'Clearance for linear projects will not need Gram Sabha consent' *The Hindu* (Chennai, 16 February 2013)

<sup>60</sup> Arpitha Kodiveri, 'Changing terrain of environmental citizenship in India's forests' (2017) 12(2) SLR <<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1046&context=slr>> accessed 31 January 2024

*existence is defined by the confluence of several legal regimes, often known as inter-legality<sup>61</sup>.*

According to Santos, the postcolonial legal environment can be characterised as one that exhibits inter-legality, when several sources of law interact, cohabit, or potentially clash with one another. Various legal jurisdictions overlap to form a complex network of laws operating at multiple levels to govern a wide range of legal matters. The inter-legality of the Vedanta case is exemplified by the diverse regulatory framework. The act of overlaying legal domains provides social movements with the chance to engage with several legal forums in order to challenge a legal infringement or assert a legal demand. The phenomenon referred here as jurisdictional leapfrogging is characterised by the ability to access a wide range of forums and legal systems.

Externalisation is the phenomena of crossing national borders and seeking intervention from foreign agencies. There are Advocacy coalitions, such as Brazilian rubber tappers and NGOs, which collaborate with environmental groups from the global north in this process. They collaborated to advocate for the World Bank's accountability regarding the Brazilian government's development endeavours in the Amazonian rainforests<sup>62</sup>.

Jurisdictional leapfrogging is a phenomena that has a considerable impact on domestic decision-making, especially when the intervention is through a Foreign Institution. The Vedanta instance demonstrated how clearly this phenomena occurs. Concepts and ideas that might be thought of as proto-law are introduced into national legal systems by international agencies like the World Bank and OECD. Even while these ideas and precepts are not legally binding, in practise they often take on a comparable degree of duty<sup>63</sup>.

The combination of proto, soft and hard law gives rise to a situation in which disputes are contested in several forums, employing a diverse range of legal terminology. The issue at hand is to the absence of sufficient and prompt consultation when a complaint is submitted to the National Contact Point (NCP), as per the rules established for multinational enterprises. The contention is structured in a manner that aligns with the established legal parameters,

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<sup>61</sup> Jason Cross, 'Toward a New Legal Common Sense: Law, Globalization, and Emancipation' in Boaventura de Sousa Santos (eds), *Reviewed Work: Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (CUP 2002)

<sup>62</sup> Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998).

<sup>63</sup> Margaret E Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998).



with the aim of safeguarding the entitlements of indigenous tribes to their territories and natural assets.

The phenomenon of legal and regulatory pluralism is associated with two main factors: the trans nationalization of law and the coexistence of multiple transnational norms, which are not necessarily integrated into local legal systems. The diffusion of international norms into domestic law is not always guaranteed, however, they act as an additional level of safeguard in the enforcement of domestic legal standards. The case of Vedanta serves as an indication of this phenomenon. The transmission of standards, derived from influential global legal instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Indigenous and Tribal Populations Convention (ILO Convention 107) of the United Nations International Labour Organisation, as cited in the Vedanta by the Supreme Court, might not be occurring with regard to non-binding instruments that possess a means of implementation, such as the National Contact Point (NCP).

## **VII. LEVERAGING THE RIGHT TO CONSENT AS A STRATEGIC APPROACH**

The act of mobilising around rights has emerged as the primary method used by social movements to assert legal rights<sup>64</sup>. The inclusion of rights and legal demands into social mobilisation techniques is a crucial component of social movements in India. These movements have effectively transformed their legal requests into concrete legislation, as seen by the enactment of the Forest Rights Act (FRA)<sup>65</sup>.

The efficacy of using law as a pivotal mechanism for societal mobilisation in instances of dispossession is constrained, although legal proceedings sometimes yield favourable outcomes. It's the author's view that the state's application of rights-based law is selective, resulting in varying degrees of legal enforceability for rights<sup>66</sup>. In some instances, rights are given significant weight, while in others, they are overshadowed by the principle of eminent domain. Consequently, legal battles become complex and uncertain. The complexity of this scenario is heightened when states enact additional laws or revisions to existing legislation

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<sup>64</sup> Cesar Rodriguez Garavito, 'Ethnicity.gov: Global Governance, Indigenous peoples and the right to prior consultation in social minefields' [2010] *Indiana Journal of Global Legal Studies* 18(1) 263

<sup>65</sup> Priscilla Jebaraj, 'Clearance for linear projects will not need Gram Sabha consent' *The Hindu* (Chennai, 16 February 2013)

<sup>66</sup> Minati Dash, 'Rights-Based Legislation in Practice: A View from Southern Orissa' in Kenneth Bo Nielsen and Alf Gunvald Nilsen (eds), *Social Movements and the State in India: Deepening Democracy?* (Palgrave Macmillan UK 2016)

that diminish the previously established pro-rights stance of such legal measures. In light of the complex and varied landscape, as well as the underlying political and economic factors that shape the context in which legal mobilisation occurs, social movements depend on innovative legal tactics and platforms to contest acts of dispossession.

An illustrative instance pertains to the legal mobilisation techniques used by social movements opposing mining activities in the context of anti-Vedanta campaigns. It is essential to analyse the interplay between soft law, which refers to non-binding regulations, and statutory law. The concept of agility provides a means for facilitating the interaction between local legal systems and international legal norms. Despite having signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), India does not formally recognize the “Indigenous” designation. The absence of acknowledgment has hindered the ability of Adivasi groups to use international legal instruments such as the UNDRIP.

#### **VIII. NAVIGATING FPIC’S REGULATORY PLURIVERSE: LEGAL MOBILIZATION STRATEGIES IN THE VEDANTA RESOURCES CASE**

In 2003, Vedanta Resources Limited, a global corporation, signed into a memorandum of understanding with the state of Odisha to develop an aluminium refinery in Lanjigarh. This agreement was facilitated via its fully owned Indian subsidiary, Sterlite Industries<sup>67</sup>. Bauxite, a material required for refining aluminum, was to be mined from a nearby deposit located in the Niyamgiri Hill. The responsibility of ensuring the supply of bauxite from Niyamgiri was entrusted to the state-owned Odisha Mining Corporation. The local forest-dwelling population expressed objection to this arrangement, citing concerns that it would infringe upon their sacred rights associated with the hill.

At the time of signing the memorandum of agreement, the only stipulation for getting approval was the Samatha ruling, with no further requirements in place. The Supreme Court rendered a significant ruling in 1997, known as the *Samatha v State of Andhra Pradesh and Others*<sup>68</sup>, which established that property located in scheduled regions is prohibited from being sold to anyone outside of the tribal group, including commercial mining firms. The criteria established in the Samatha ruling serve to prohibit the transfer of property in

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<sup>67</sup> ‘Vedanta May Invest Rs 10,000 Crore on Lanjigarh Refinery Expansion’ (*The Economic Times*, 31 July 2014) <<https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-may-invest-rs-10000-cr-ore-on-lanjigarh-refinery-expansion/articleshow/39352799.cms>> accessed 6 November 2023

<sup>68</sup> *Samatha v State of A.P. and Ors.* AIR 1997 SC 3297.

scheduled areas for the sake of private financial gain. Since Niyamgiri was designated as a scheduled place, the standards established under this precedent were deemed appropriate. The location of the proposed mining site was found to be within a region characterised by a significant presence of forest cover. Hence, for the continuation of mining operations, acquiring a forest clearance permit from the Ministry of Environment, Forest, and Climate Change became a necessity. This authorization was obtained through collaborative efforts with the Forest Advisory Committee. Recently, the Central Empowered Commission (CEC), established by the judiciary to evaluate forest clearance petitions, has been petitioned by two local activists affiliated with the Niyamgiri Suraksha Samiti (Committee to Safeguard Niyamgiri). These activists have urged the CEC to conduct an evaluation of the approval procedure<sup>69</sup>.

In the year 2005, the CEC submitted a comprehensive report to the esteemed Supreme Court, wherein it articulated its professional opinion advising against the approval of forest clearance. The Forest Advisory Committee, entrusted with the task of offering recommendations for the granting of said clearances, was duly requested to undertake a comprehensive assessment of the aforementioned determination. The Norwegian Pension Fund has elected to discontinue its endorsement in light of the conclusions presented in the report disseminated by the CEC, attributing the infringement upon human rights as the impetus behind their decision. The Forest Rights Act (FRA) was enacted in the year 2006, prompting communities to mobilise and utilise this legislative provision to assert their entitlements with respect to forest land and sacred territories. The commencement of claims for rights under the FRA gave rise to an enduring social movement that manifested itself in opposition to the mining activities. The organisation known as Niyamgiri Suraksha Samiti contended that the transaction involving granting of Land to Vedanta would amount to a violation of the rights of the indigenous forest-dwelling communities to exercise their right to Free, Prior, and Informed Consent (FPIC) as recognised by international law, particularly the UNDRIP. The *Dongria Kondh* community is acknowledged as a highly vulnerable indigenous group that has inhabited and depended on the Niyamgiri mountain range for numerous centuries. The formation of the Niyamgiri Suraksha Samiti can be understood as a community-driven reaction to the government's disclosed plans to initiate bauxite mining activities. The primary objective of this initiative was to ensure the protection and

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<sup>69</sup> Stellina Jolly, 'The Vedanta (Niyamgiri) Case: Promoting Environmental Justice and Sustainable Development' in Carmen G Gonzalez, Sara L Seck and Sumudu A Atapattu (eds), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press 2021)

preservation of their sacred hill, even in the absence of explicit recognition pertaining to the right of prior and informed consent. The forest-dwelling communities orchestrated their demonstrations with a central focus on this foundational principle.

In 2009, a circular was issued by the Ministry of Environment, Forest and Climate Change, which duly recognised the entitlement of Gramme Sabhas to provide their consent. The acknowledgment mentioned above constituted the basis upon which the community residing in the forest made the determination to approach the Supreme Court with the intention of asserting a retrospective violation. The case was duly accepted by the Supreme Court, subsequently initiating the process of judicial examination. The phenomenon of legal mobilisation on an international scale was observed to run parallel to the process of domestic judicial examination.

Survival International, a prominent international non-governmental organization, has lodged a formal complaint through the National Contact Point (NCP) in the United Kingdom. This NCP serves as the authorized body for addressing violations of the standards established by the Organisation for Economic Co-operation and Development (OECD) concerning multinational corporations. In the event of a breach, the Non-Compliance Panel (NCP) holds the authority to recommend the commencement of a mediation process between the organization and the affected party. However, Vedanta did not accept the offered mediation. According to NCP, it was determined that Vedanta Resources Pvt Ltd had contravened the standards due to insufficient and untimely consultation, as shown in the case of *Survival International v Vedanta Resources Pvt Ltd*.<sup>70</sup> in 2008. The informal legal mobilisation techniques, such as the leader of Niyamgiri Suraksha Samiti staging a rally outside the Vedanta annual general meeting in London, greatly helped their case.

Given the heightened international scrutiny, a comprehensive domestic endeavour was embarked upon to assess the permissions that had been granted to Vedanta. In accordance with a study conducted by a commission under the leadership of Dr. Usha Ramanathan, an independent legal scholar and advocate, it was observed that the authorization for the aforementioned location had been acquired without due adherence to the enforcement of the Forest Rights Act. Following the aforementioned events, a formal request was submitted with the intent of reevaluating the decision rendered by the Forest Advisory Committee pertaining

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<sup>70</sup> ‘Survival International vs Vedanta Resources plc’ (*OECD Watch*, 19 December 2008), <[oecdwatch.org/cases/Case\\_165](http://oecdwatch.org/cases/Case_165)>, accessed 6 November 2023.

to the authorization of forest clearance. A comprehensive report was produced by a committee under the astute leadership of Naresh Chandra Saxena, a distinguished former Indian bureaucrat. The findings of the report indicate that the execution of the Forest Rights Act (FRA) has been deemed inadequate, leading to the inference that the proposed project, if sanctioned, would result in substantial detriment to the Indigenous Dongria Kondh community as well as the Dalit communities inhabiting the area.

The Supreme Court case deliberated over many legal infractions and acknowledged the jurisdiction of the Gramme Sabha to determine the matter via a democratic process, with particular focus on the entitlement of communities to exercise their freedom of religion as enshrined in Article 25 of the Constitution<sup>71</sup>. A total of thirteen Gramme Sabhas were officially acknowledged, despite the fact that several other hamlets and villages were affected by the mining operations. The Gramme Sabhas conducted a vote in opposition to the mining project, and subsequently, the government supported their choice. The Supreme Court cited the ruling of the UK NCP as substantiation for a breach of international legal norms, in addition to the relevant provisions of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Vedanta Resources Limited implemented revisions to its internal stakeholder management rules in light of the severe criticism it faced, including the mandatory inclusion of Free, Prior, and Informed Consent (FPIC). Despite the first breach of the sustainable development framework established by the Indian Bureau of Mines, it is important to note that this framework was intended as a guide document for decision-making rather than a legally obligatory obligation.

The analysis of legal mobilisation presented in this story highlights the active involvement of social movements in navigating legal heterogeneity as a means to advocate for the recognition of Free, Prior, and Informed Consent (FPIC). Simultaneously with the pursuit of legal remedies at the local level, there was a concomitant initiation of legal proceedings on an international scale. The presence of such concurrent challenges within the regulatory landscape might sometimes facilitate the disruption of collaboration between governmental entities and corporate players. Legal mobilisation in India is often conducted within the narrow framework of the pro-business development paradigm and the use of eminent domain. However, pursuing legal action outside national boundaries presents a viable avenue for

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<sup>71</sup> *Orissa Mining Corporation v Ministry of Environment & Forest & Others* [2013] 6 SCC 476.

holding responsible those involved in such activities. The following topic of discussion is to the act of jurisdictional leapfrogging, which involves beyond the confines of a narrow framework.

## **IX. CONCLUSION**

The legislative framework pertaining to the concept of FPIC in India is situated within a political economy that prioritises economic expansion through the pursuit of mining activities. In contemporary times, there has been a concurrent endeavour to streamline commercial operations and legislative initiatives with the objective of reducing the prominence of consent rights. The utilisation of the Doctrine of Eminent Domain is being employed by the State to expedite the process of land allocation for the specific purpose of mining activities. The operationalization of FPIC takes place within the confines of a comprehensive and dynamic pro-business developmental paradigm. This chapter elucidates the potential disruption of the frame through the employment of the legal mobilisation technique commonly referred to as jurisdictional leapfrogging.

The prevailing circumstances have engendered a discernible predisposition within the regulatory framework, wherein the efficacy of enforcing violations pertaining to FPIC exhibits a notable disparity between instances involving multinational corporations and foreign investments vis-à-vis those involving state-owned enterprises. The regulatory framework is poised to experience a significant metamorphosis due to the growing involvement of multinational enterprises in the mining sector, with a particular emphasis on coal mining. The attainment of a triumphant execution of the principle of FPIC can potentially be realised through the astute circumvention of jurisdictional impediments. Nevertheless, it is imperative to acknowledge that this particular approach may not possess universal applicability across all conceivable scenarios. The perpetuation of a win-lose dynamic endures when the exercise of FPIC takes place within a framework that prioritises the advancement of business interests.