

***Adivasi Women and Mining In India:
A Handbook for Adivasi Women and NGOs Involved in Campaigns
for the Rights of Mining Affected Adivasi Communities***



**Dhaatri Resource Centre for Women and Children
&
Samata**

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***Adivasi* Women and Mining In India:
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Introduction

In India, as across the world, large-scale mining projects have primarily been located in forest and indigenous peoples' (*adivasi*) lands. The historical conflicts between the *adivasis* and the state when mining projects have displaced and affected these communities have now spiralled into a region of war and violence, given the scale and number of mining projects being proposed in the *adivasi* lands. The impacts that these projects have had on the *adivasi* women have completely been by-passed with the women being excluded from any consultation, compensation or rehabilitation. Yet the impacts have caused serious problems and human rights abuses on *adivasi* women who are the principal campaigners for the protection of their lands and natural resources.

This booklet is intended to serve as a handbook for understanding the impacts and implications of mining projects on *adivasi* women and as a compilation of the demands and perspectives gathered from *adivasi* women affected by different mining projects. The booklet, although not exhaustive, is meant to provide suggestions for civil society groups working on mining issues to bring a focus to the gender concerns due to mining and to consciously include these concerns in their advocacy and campaign strategies for the rights of communities. The booklet is a summary of the section on displacement and *adivasi* women from a national level study on the impacts of mining

on women in India called 'Contesting Women's Rights in the Political Economy of Mining in India'. The problems identified and the perspectives and demands presented here are from the series of consultations with *adivasi* women from many states in India.

Some Facts About Mining in Adivasi Areas in India and Impacts on Adivasi Women

- Most large-scale mining has historically been located in *adivasi* areas in India
- There are distinct gender separate impacts of mining projects which are deliberately ignored
- Mining has direct impacts on *adivasi* women's lives, rights and ownership over land, forests, water bodies, incomes and livelihood
- Mining projects have led to displacement of *adivasi* communities where women are direct losers, yet are not accounted for in the project costs
- Displacement to *adivasi* women means more than just losing a house or land. Existing mining projects show how women lose their economic activities, food security, social, cultural and health support systems, and often end up as landless and migrant labour
- Displacement from Scheduled Areas (areas marked out with predominantly

adivasi populations under the Constitution of India) also has direct impact on *adivasi* women's constitutional and customary rights over their land

- As majority of *adivasi* women are illiterate and have no technical skills, very few affected women have employment opportunities in the mines
- Development indicators for women like literacy, mortality rate, nutrition, health and economic well-being are clearly seen to be worse than prior to mining in most areas, indicating negative growth due to mining
- School drop-out rate, child labour and child malnourishment are clearly visible in most *adivasi* areas having mining projects
- Vulnerability to sexual exploitation, violence and crime are seen to be increased in *adivasi* areas having mining activities

Further

- Environment Impact Assessment documents of mining projects only briefly state the social costs and impacts and usually provide for very peripheral incentives to compensate these losses
- Compensation and rehabilitation are only indirectly provided to women as it is the male members who are called for meetings, who receive monetary compensation or in whose names the resettled houses/lands are provided. Hence women rarely have the opportunity to

benefit from these rehabilitation packages

- Very few women from affected *adivasi* communities are offered employment in the mines, even after the death of their husbands
- Most mining townships and surrounding areas are found to have several destitute women, single mothers, widows, female-headed households as a result of mining
- It is found that women in communities surrounding mines suffer from several health problems like malnutrition, tuberculosis, respiratory and reproductive illnesses, waterborne diseases and illnesses related to pollution and toxicity due to the mining activities. However, they receive no medical services or compensation for these problems as these are not accounted for within the project costs.
- Disclosure of project information prior to the clearance and consultation with *adivasi* women which is legally mandatory under the Panchayat (Extension to Scheduled Areas) Act 1996 and an international obligation under the United Nations Declaration on the Rights of Indigenous People 2007 (free, prior and informed consent) are absent where mining projects are being proposed. Further, *adivasi* women are prevented from participation in public hearings through corporate sponsored violence and police intimidation.
- Space for democratic dissent is being more

and more reduced, with degradation of local governance institutions and customary leadership.

Legal Framework in India and Adivasi Women Affected by Mining Projects

India has several Constitutional safeguards to protect *adivasi* peoples' land and resource rights. These were strengthened with legislations and court judgements over the years. Of foremost importance in the context of *adivasis* and their constitutional rights are:

The Fifth Schedule of the Indian Constitution

This provides a historic guarantee to the *adivasis* in the country and is the backbone to the legal framework in the *adivasi* areas. The most important right provided under this Schedule is the prevention of land alienation through land transfer regulation where no land or immovable property in Scheduled Areas can be transferred by way of sale or lease to persons other than an *adivasi*.

For the *adivasi* women, the Fifth Schedule of the Constitution provides protection of their lands and natural resources from being alienated to outsiders. Even if it does not directly provide for legal entitlements to the women, they enjoy a fair degree of control and access to these resources within their traditional social norms as long as the lands are within their community fold. As women have a primary role in agriculture and forestry activities, the cultural practices allow for decision-making and usufructory rights of women as well as their control over incomes, to a large extent.

The Panchayats (Extension to Scheduled Areas) Act 1996

This Act is one of the most powerful legislations recognising the rights, cultures and aspirations of *adivasi* people in Scheduled Areas. The Act provides for reservation of seats for *adivasi* women (not less than one-third) as Chairpersons and in the *Panchayat*. As per the Act the *Gram Sabhas* have to be consulted prior to acquisition of land for any developmental activities, including mining, and are endowed with considerable powers to function as institutions for self-governance and *adivasi* self rule. A *Gram Sabha* includes all the adult male and female members of the village or village *Panchayat* whichever applies to the respective states and assent of all the members is required through a resolution passed by them. This is, therefore, an important governance institution which gives equal rights to men and women in decision-making over village matters, atleast on paper.

The Act enables women to participate in *Gram Sabha* meetings and voice their rights, especially when participating in mining related campaigns, participation in passing resolutions regarding mining projects, participating in public hearings and dialogue with state over rehabilitation matters.

The Samatha Judgement 1997

The Judgement supported the spirit of the Fifth Schedule of the Constitution and the Land Transfer Regulations of different state governments with respect to protecting *adivasi*

peoples' land rights against being alienated to private mining companies. It has special significance in the case of rights over mineral resources in Scheduled Areas. The Judgement stands not only as a custodian of *adivasi* land rights, but also has strong implications for the protection of *adivasi* women's land rights as the Fifth Schedule primarily aims at prevention of exploitation of *adivasi* communities by outsiders

Some of the salient features are:

- *Adivasi* lands in Scheduled Areas cannot be transferred to non *adivasis* or private industries as a body corporate like a private mining company is also a non-tribal 'person'.
- Government cannot lease out lands in Scheduled Areas for mining operations to non *adivasis* as this was in contradiction of the Fifth Schedule of the Constitution
- Mining activity in the Scheduled Areas can be taken up only by a government entity or a cooperative of local *adivasi* community and that too only if it is in compliance with the Forest (Conservation) Act 1980 and the Environment (Protection) Act 1986.
- The *Gram Sabha* shall be competent to safeguard and preserve community resources and thereby reiterated the need to give the right of self-governance to *adivasis*.
- The Court directed that 20% of the net profits be set aside as a permanent fund as

part of the industrial/business activity for establishment and maintenance of water resources, schools, hospitals, sanitation and transport facilities by laying roads, etc. This 20% allocation would not include the expenditure for reforestation and maintenance of ecology.

The implications of the Judgement for women:

The Samatha Judgement came as a saviour of the *adivasi* communities, particularly women who were in the forefront of the campaign and opposed the mining projects.

Protection of lands in Scheduled Areas from industrialisation implies that *adivasi* women, who are the main protectors and dependents of land, continue to hold ownership and control over their lands, even in the absence of legal title deeds being in their names.

The Judgement upholds the spirit of the Constitution which recognised that *adivasis*, particularly women, are most vulnerable to the exploitation of outsiders and that they would not have a level playing ground with private industries like mining.

It implies a continued economic sustenance and livelihood opportunities directly for women as they are the mainstay of traditional economies.

The Samatha Judgement perhaps also set a precedent to the debate over share and benefits to the local communities and the need for a cost-benefit analysis of mining projects although it limited its verdict to the legal context of defining a 'person' whether individual or corporate. Particularly with the gust of

multinational mining companies putting up proposals for mining leases in Scheduled Areas, the Judgement stands as a custodian of the *adivasi* women during the post-1990s liberalisation crisis.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

The Act is relevant in the context of mining as most mining areas fall within the forest areas or Scheduled Areas where *adivasis* and forests are co-existent. The Act recognises the rights of forest dwellers to their individual and common properties in forest lands occupied by them prior to 2005. The Act provides for *pattas* to the wife jointly with the husband for individual family claims on land cultivated. In some states, the implementation of the Act is being hindered by mining interests. The Act is an important legal and food security tool for *adivasi* women as this sets a precedent for women to gain legal ownership of land through the joint title deeds.

Recommendations and Demands of Adivasi Women

Protect the rights of adivasi women under the Fifth Schedule

Any dilution of the Fifth Schedule and the Land Transfer Regulations of the Scheduled Areas would imply violation of the rights of *adivasi* women whose lives are linked to the lands and natural resources.

The repeated attempts at bringing amendment to the Fifth Schedule which aims at allowing

transfer of lands in the Scheduled Areas for private mining should be prevented at all costs.

In this direction, the Samatha Judgement which acts as the custodian of *adivasi* women's control over their lands should be respected in its true spirit.

Respect the Panchaya (Extension to Scheduled Areas) Act 1996

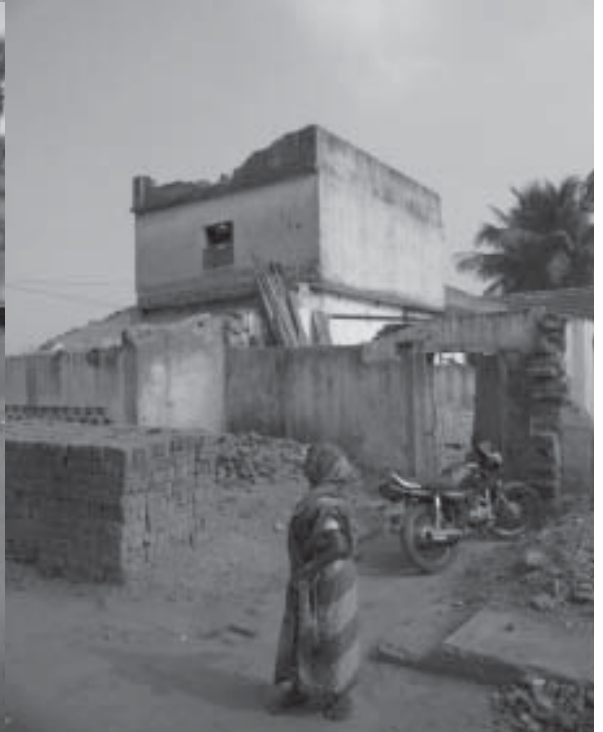
The Act should be respected and complied with in accordance with the United Nations Universal Declaration on the Rights of Indigenous Peoples. Unless the processes of consultations are transparent and democratic, the laws merely serve as a mandatory procedure rather than ensure true governance and participation.

Political stability should be the urgent priority especially in the Scheduled Areas where violence and political conflict have reached disproportionate levels. The state should be conscious that addressing true development needs of people in these remote areas is economically more pragmatic than armed conflict or the foreign exchange gained to a few companies at the cost of people's development without the benefits being enjoyed by local communities.

Free, prior and informed consent for adivasi women read along with the Act in the context of mining implies:

- a. That the women have the right to project specific information on the quantity of water, extent of forest and revenue land and all other resources that will be diverted













- for the activity.
- b. That the full participation of and decision-making by *adivasi* women is imperative without which no *Gram Sabha* resolution is valid.
 - c. That the Act should be read as village or group of hamlets being taken as *Gram Sabha* and not the village *Panchayat* as adopted in some of the state Acts. All affected villages and families should have the right of participation in *Gram Sabha* meetings to pass resolutions regarding a project.
 - d. That the no-objection certificates for sanctioning minor minerals should be vested with the *Gram Sabhas*. No certificate can be made valid without the consent of the affected women in the *Gram Sabha*.
 - e. That the women should have access to information, decision-making over utilisation of royalties and verification of utilisation, mine site verification, complaints over non-compliance, and participation in grievances and redressal processes that affect their communities.
 - f. That the women should have the freedom of objecting to any mining projects that hinder their protection and development, without fear or threat.
 - g. That the process of Environment Impact Assessment should be undertaken by independent agencies, and with clear and measurable gender assessment indicators.
 - h. That the public hearings should be conducted in an atmosphere of democratic conduct without obstructing the participation of women through state and police excesses as is currently being followed.
 - i. That the company should provide, in written form to the *Gram Sabha*, a guarantee that the mining activity will not be located near the habitations, school, *anganwadi*, water sources and health centre of the village.
 - j. That the company should provide a guarantee that water bodies used by the community will not be affected by their operations and should allow for community evaluation of these sources and their quality from time to time, and that no area beyond the lease area will be occupied/acquired without formal procedure.
 - k. That the company should also guarantee that only specified areas far away from the village will be used for parking of trucks and vehicles, and these areas should be designated before the clearance of the lease so that women and children are protected from a socially threatening environment that is created by movement of a floating population.
 - l. That dust and water pollution will be mitigated through regular precautionary actions (which already exist under law) but penal action will be taken if regular mitigating activities are not undertaken.

Project monitoring process should be formally defined at the time of granting of lease with affected women as participants in the monitoring activities.

- m. That health check-ups and treatment should be provided by the mining company both to the workers and to the community, and results of the same should be available for public scrutiny at the office of the company and also submitted to the district medical and health officers at regular intervals fixed at the time of the lease or provided in the Mines Safety Rules of the Mines and Minerals (Development and Regulation) Act 1957.
- n. That mine closure plans should be provided at the time of granting of lease with clear explanation and timeframe on how the clean up of closed / abandoned mines will be undertaken, reclamation of lands, water bodies, forests will be done, resettlement of workers and communities if required, and such other socio-ecological costs of closure should be spelt out. A closure audit should be undertaken by an independent agency with defined participation of women from affected communities in the process of mine closure audit.

Undertake stocktaking of Brownfields before opening up Greenfields

Land acquisition leads to displacement of women and children who are the most compromised in resettlement and rehabilitation for mining projects, with added disadvantage

to nature dependent Scheduled Areas.

A stocktaking of current utilisation of land acquired, wastage, dumping, disturbance to water bodies, etc., to be assessed with the help of an independent technical and social assessment committee that has a clear gender equity mandate. The assessment developed through measurable indicators could include such aspects as impacts on women and children, the effect on their health, education, livelihood, violence, food and social security, as well as their relation to ecological resources. This stock taking of Brownfields should set the direction for planning in the Greenfields.

A time-bound programme for right-sizing acquisitions must be enforced as vast areas of land are acquired without utilising the same for the specified purpose and without finding alternatives for more frugal use of land.

There is a huge potential for rationalisation of mining leases and also to cull poorly productive deposits and illegal mines without the need to acquire more and more areas. Details of land to be acquired, rationale for requiring the specified area, what non-displacing alternatives have been explored, clear design and working plans for the specified area proposed need to be developed.

Clearances for mining lease should not only be obtained from the Forest Department but also from key departments like that of Water Resources, Education, Women and Child Development as these resources and delivery of services are seriously affected by mining activities.

Give precedence to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006

Where there is a conflict of interest between mining and settlement of people's rights under this, implementation of this Act should take precedence over acquisition of lands for mining as the former is a legal right ensured to the *adivasi* people in the Constitution. This is important from the perspective of gender as, in many places, women are getting joint *pattas* to the lands under the Act and it would be a gross injustice to prevent the settlement of their rights for the sake of mining interests.

Undertake Environment Impact Assessment from a gender lens

Environment Impact Assessment documents to be made mandatory to provide for details of impacts of the mining project on local communities with focus on women and children.

A cost-benefit analysis to be undertaken of the project based on social and gender impacts, losses to all sections of the communities including women (income, livelihood, resource ownership and usufructory rights, social, cultural and ecological losses) and how they will be compensated / addressed.

Concrete benefits of the project to be provided inclusive of gender equity in economic opportunities, rehabilitation and resettlement, education, training and other skills development benefits, in clear written form for the *Gram Sabhas* to take their decision over the projects.

The Environment (Protection) Act 1986 should be immediately amended to make it compulsory for Environment Impact Assessments to have this component and to set up independent agencies for undertaking these assessments instead of the current practice of agencies hired by the interested companies. Gender Impact Assessment should be an important component of the Environment Impact Assessment documents.

Ensure gender equity in rehabilitation planning

Non displacing alternatives should be seriously explored and a report of the rationale for displacement should be clearly indicated in the EIA document for community and public scrutiny.

Rehabilitation must be an integral part of the lease agreement and the rehabilitation plans should clearly specify the impacts on women and children and the plan for rehabilitating them.

These should begin with a baseline survey of pre-existing social, health, nutrition and economic condition, food security, both from forest and land, of the women and their families and to ensure that adequate information exists to accomplish rehabilitation tasks. The area of survey should include the entire direct and indirectly affected communities, not only the immediate land losers.

These include providing employment, livelihood to displaced/affected families, widows and single mothers with children, made

destitute due to mining, mentally and physically challenged in the community, especially chronic and long-term health problems which have resulted from mining and related to pollution, contamination, toxicity, disappearance of resources like water bodies that have affected the nutrition and food security of the communities, etc.

Rehabilitation and resettlement should be based on gender equity in respecting legal rights as well as providing new opportunities and benefits. The legal rights to be kept in mind are:

- To recognise right of women to be treated as co-parceners as per the Hindu Succession (Amendment) Act 2005. Women to be treated as head of the household on par with the husbands and made joint owners along with their husbands of the resettled houses, lands and compensation with joint *pattas* with respect to the former, and joint bank accounts for the latter. The law should specify the legal rights of single women, widows and women-headed households when their lands are acquired and provide for a fair share in the legal rights to resettlement.
- Provide equal rights to the daughters as with sons, over the lands acquired by the companies as per the Hindu Succession (Amendment) Act 2005. Daughters to get equal share in the compensation and rehabilitation as that of sons. Daughters should be provided jobs as that of sons in

the mining project corresponding with their educational levels.

- The affected communities should have the legal right to rehabilitation before displacement and land alienation. The affected communities complain that the coal companies are taking reference to the Coal Bearing Areas (Acquisition and Development) Act 1957 to force affected communities to first demolish their houses before claiming for compensation. This practice should be revoked and necessary amendments need to be brought in if any of the sections of the Act so imply this practice, as it is a violation of the right to housing and right to life of the affected communities.

Further

- The identification of alternate lands for housing and release of funds for reconstruction involves long delay which violates the basic rights of shelter and right to life of the affected. Rehabilitation should be completed in a time-bound manner with punitive action for non-/incomplete implementation stated within the project document.
- The land acquisition and rehabilitation plan for a village should be provided in a comprehensive manner instead of the staggered manner of displacing a few families at a time and offering jobs and resettlement likewise. The *Gram Sabhas* cannot take a proper decision in the

absence of a comprehensive project plan and rehabilitation plan for the village.

- Women should be equal participants in the planning and implementation of rehabilitation where they are involved in the identification of alternate sites and water sources, design of houses and villages, kitchen gardens, schools, healthcare centres and other amenities identified and planned by them.
 - Women should have the right of giving or withholding permission for liquor shops, especially in the Scheduled Areas where the *Gram Sabhas* have the ‘power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant’ under the Panchayat (Extension to Scheduled Areas) Act 1996.
 - Rehabilitation and resettlement should be part of the project cost and should have a decent living standard provided to the affected. The current practice of huge expenditure and land allocation for the company townships whereas the resettled colonies are provided with less than minimal facilities should be stopped. There should be a shift to pragmatic and socially just approach to rehabilitation.
- b. Details of how minimum disturbance to the existing resources, forests, water bodies, cultures and social institutions will be ensured by the company.
 - c. Details of how these disturbances will be compensated/rehabilitated/alternated within the project cost, especially with respect to women and children.
 - d. Free health services and hospital facilities should be provided not only for employees but also for affected communities and communities around the mining project, particularly child healthcare facilities that address the pollution and other problems that result from mining. The mining companies should set aside a health fund that is independently handled, for the treatment of women and children in the villages surrounding the mines, who suffer from serious and chronic illnesses. The mining companies should compensate the communities with health problems/deformities/birth defects that are associated with mining activities. An independent medical assessment that especially looks into reproductive health concerns has to be provided to avoid biased medical reports on behalf of the company. Some existing mining areas

The rehabilitation plans should include a preliminary and periodic assessment plan for:

- a. Existing institutions that support the development of women and children like *anganwadis*, schools, colleges, health institutions both traditional and

have been receiving reports of alarming rates of health problems among women and children—these hotspots should be identified and declared as health emergency zones and an urgent health intervention programme should be taken up. Proposed projects with similar mineral extraction plans should provide a project management plan for prevention of these diseases/illnesses as a precautionary principle.

Penalties should be defined for non-implementation of rehabilitation as per projected plans and assessments with recommendations made by the monitoring committee.

Further, rehabilitation should show direct benefits for women and children, not just self-help group schemes, or collective programmes under Corporate Social Responsibility, which are not a true replacement of their lost livelihoods. The current practice of providing monetary compensation has shown that within a short period the project affected families are made destitute as a result of losing their lands and economic sustenance. Concrete alternate livelihood activities and proper economic activity that treats them as individual economic units have to be clearly indicated. Rehabilitation should also include not just the immediate land losers but all who are directly and indirectly affected. Otherwise, women who lose their rights to cultivate their kitchen gardens or lose access to water due to the groundwater depletion as a result of mining, are an example

of how mining creates losses without pinning responsibilities or assessing the actual costs/losses.

Mine closure plans

Mine closure plan should include clear financial allocations and programmes for protection and development of women and children.

The post-closure livelihood plan for workers and local communities should be specified.

The mining companies should not be allowed to abruptly close down their hospitals and medical facilities without a withdrawal plan for medical facilities with formally laid down procedures and permissions for handing over of these services to the public health departments with financial commitments during the transition and post closure period.

Women from the affected communities should be involved in these mine closure plans and implementation of mine closure.

The reason for mining regions to be dominated by corruption, violence and terror is due to the huge profits that are made by companies thereby creating unholy nexus between political and economic lobbies, while the local conditions of people and environment are destroyed. Unless costs are distributed fairly, incomes and profits are more distributive and particularly, shared with local bodies and communities this huge divide caused by mining will destroy the entire democratic framework of India. Therefore, financial transparency is of utmost importance. Government, banks/investment

agencies and companies have to commit to transparency like making public the payments made by companies, accountability as in processes like the Extractive Industries Transparency Initiative and setting up more stringent social and rehabilitation policies.

And lastly, the best sustainable development framework, considering the status of weak governance in mining areas in India and the even poorer access to rights that women have, is to 'Minimise Mining'.

Sustainable development of the country and not that of a company should be the purpose of mining. Therefore, a review of the economics of mining is urgently required here, from a gender-based perspective with a thorough assessment of the costs and benefits of mining *vis-a-vis* the diverse other resources and livelihoods in this Greenfield area. Particularly, women's existing incomes and economic

sustenance have to be assessed against the proposed economics of mining to understand whether mining provides a better scope for sustenance to the women. The assessment should also include the ecological economics of mining as against existing livelihoods and resource utilisation. These should be further based on assessment of the constitutional-customary rights of women in mining and pre-mining situations.

The above recommendations are aimed at bringing focus to the campaign demands of communities and people's movements fighting for the rights of mining affected people. These were gathered from a series of discussions and consultations with *adivasi* women, NGOs and defenders of human rights working in the grassroots for the rights of mining affected communities for the national study on the impacts of mining in India.



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