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## The Persistence of *Abua Raj*: Birsa Munda's Vision and the Contradictions of Statutory Self-Governance in India's Fifth Schedule Areas

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### ABSTRACT

The long-term political philosophy of Dharti Aaba Birsa Munda is premised upon an ultimate claim to aboriginal Adivasi sovereignty – the right of Adivasi communities to self-rule through *Abua Raj* (our rule) and protection of *Jal, Jangal, Jameen* (water, forest, land), articulated as **Abua Raj** (self-rule) and the protection of the proprietary regime of *Jal, Jangal, Jameen* (water, forest, land). This paper critically analyzes the **Panchayats (Extension to Scheduled Areas) Act (PESA), 1996**, which was intended to institutionalize *Abua Raj* within the framework of the Constitution's Fifth Schedule. The central finding is that PESA's transformative potential has been **constrained by a process of structural divergence**, where state-level institutional practices appear to **render the Central legislation ineffective** in its core objectives, effectively transforming the protective law into an instrument of **structural dilution**. This challenge arises from **State Legislative Non-conformity** (e.g., the provisions of the Jharkhand Panchayati Raj Act) and the **administrative interpretation of PESA Section 4(i)**, which privileges advisory 'consultation' over mandatory community consent,



which substitutes non-binding "consultation" for the required mandatory community **consent** during resource acquisition. **Novelty:** The contemporary Pathalgadi movement is analyzed as a form of "**subaltern legal praxis,**" demonstrating a **territorial assertion of the Gram Sabha's statutory authority** by referencing the literal text of the Fifth Schedule and PESA. **Conclusion:** Achieving substantive self-governance necessitates a radical revision: the adoption of **Mandatory Prior Informed Consent (MPIC)** to bridge the profound constitutional-political gap.

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## 1. Introduction: Framing the *Ulgulan* as an Assertion of Endogenous Sovereignty

### 1.1 The Problem of Sovereignty in Post-Colonial Governance

Birsa Munda became a source of central concern in the historiography of anti-colonial struggle in India, having led the *Ulgulan* (The Great Rebellion) of 1899 -1900. This drew insurrection was a massive protest against both the colonial rule and the system of Zamindari which was exploitative over the Chotanagpur Plateau. The political slogan of the Munda movement, *Diku Raj Tuntu Jana -Abua Raj Ete Jana* (the rule of outsiders is over, our rule has begun), explicitly spelled out to declare a radical demand of *Abua Raj*, i. e. self-rule by the natives). This assertion did not only symbolise a call of reform in the manner the administration should be but it was an assertion of endogenous sovereignty, a claim based on the constitutional possessory and spiritual bond of the community with the territory and its assets.

During the post colonial era, with the Indian state making constitutional provisions on Scheduled Tribes (STs) protection under the Fifth Schedule, the Adivasi sovereignty claim was to be harmonised with the constitutional norm of decentralised democracy under the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996. PESA was meant to be a legislative platform whereby the *Abua Raj* was supposed to be formalized by giving the local Gram Sabha (village assembly) authority over its resources. Nevertheless, after two decades of execution, a constitutional-political disjuncture has emerged: the realization of self-governance inherent in PESA faces significant challenges due to institutional resistance and the preservation of centralized resource control mechanisms.

The political identity of the Adivasis has continued to be constructed by the lived memory of *Ulgulan* in terms of ritual boundaries, oral narratives, and symbolic practices through which the authority of Birsa



Munda is remembered. These continuities show that the issue of self-rule is more than a constitutional issue but is also a cultural issue.

**This paper will be presented as follows: Section II is the political genealogy of resistance, part III focuses on the statutory contradictions of PESA, part IV is devoted to the customary law and gender, and the final part addresses the possible reform of the policies.**

## 1.2 Central Research Question and Theoretical Orientation

This paper focuses on the failure over time of the Panchayats (Extension to Scheduled Areas) Act (PESA), 1996, to achieve its transformational goals. It also inquires how far the failure of implementation of PESA is the systemic, structural challenges of the state to realise the indigenous sovereignty modelled by Birsa Munda (in the Fifth Schedule Areas) into realisations, and the way this failure is challenged in contemporary Adivasi political practise.

The central research question is: How do bureaucratic practices and legislative non-alignment at the state level act as structural impediments to the realization of the indigenous sovereignty paradigm of *Abua Raj* as envisioned by PESA, and how is this challenged in contemporary Adivasi political discourse?

This analysis is based on two overlapping traditions of thought. First, Subaltern Studies based on the work of Ranajit Guha is applied to explain the Ulgulan not as simply a localized disturbance, but as an eloquent expression of Adivasi political aware and activity with a conscious desire to change their world and an expectation of obtaining power (based on the acquisition of fauj and daroga positions). Secondly, the issue of Critical Institutionalism is used to critique PESA by taking a closer look at how administrative practises and legal interpretations, at the state-level, are actively used to subvert the emancipatory purpose of the central legislation, thus maintaining the status quo of resource control and and their political subjects.

This paper argues that the insufficiency of substantive authority devolved to the Gram Sabha effectively converts the protective PESA Act into an element perpetuating resource centralization. In this paper, the concept of subaltern legal action was used to explain the strategy to invoke constitutional text and statutory law as tools of local self-rule.

## 2. Review of Literature and Genealogical Political Resistance

### 2.1 Debates on Governance of Adivasis in Contemporary Times



The scholarship on Adivasi rights in the last five years has focussed on the disjunction between the constitutional symbolism and the facts on the ground in increasing measures. Bara (2020) argues that Birsa Munda's political legacy has been historically appropriated to promote nationalistic stories and as a result, his rebellious demand of territorial sovereignty or Abua Raj was ignored. Ranjan (2020) highlights in a similar vein the "politics of symbolism" where even though state actors put up statues of Munda, at the same time they defuse the rights he stood for. This dichotomy has been empirically substantiated by Sinha et al. (2022), who by studying land alienation in the state of Jharkhand prove that despite protective legislation and state mechanisms of protection, alienation of the tribal lands is continuing in the hands of industrial interests, thereby replicating the patterns of colonial dispossession. In order to understand such contemporary structural failures, it is important to understand the genealogy of the Munda political economy and the colonial disruptions that obliged the Ulgulan.

## 2.2 The Indigenous Politics of Economics of Jal, Jangal, Jameen

Munda resistance was inherently connected with their characteristic political economy - which was based on the Khuntkatti land system. This system, in which the land was held in common by the lineage -or village community (the first people to clear the forest) created communal ownership. Families were allowed to keep usufructuary rights (one could act upon land and its produce), but could not hold absolute property rights over it or alienate it, thus preserving the community of stewards. Combined with Munda's spiritual cosmology, land was worshipped as the Dharti Aba (Father of the Earth) which symbolises fertility, inter-tribal harmony and ecstatic existential union with nature.

The Khuntkatti tenure also was responsible for organising the kinship and labour relations; land was not a commodity but a social relation which ensured its subsistence and promoted reciprocity. This moral economy was re-configured by the process of colonial economic integration into a market-oriented economic system, which created indebtedness, migration and social dispersion that continue to shape Adivasi livelihoods to this day.

This political economy was self-contained and was disrupted by colonial administration in three different mechanisms of economic incorporation:

**a) Introduction of alien revenue systems:** Communal ownership was replaced by the doctrines of Zamindari and Ryotwari by imposing revenue taxes and hence institutionalised the separation of ancestral land to the outsiders (dikus) and moneylenders.



**b) Forced labour (Begar):** The omnipresent system of forced free service system and the shattering of labour made the Munda community poorer and reduced them to the status of tenants and bonded servitors on their inherited land.

**c) Destruction of traditional authority:** Applicable to Munda, the local political structures of Munda authority were replaced by the colonial state with so-called headmen (mostly co-opted), who were now obedient to the colonial authority and undermined the political legitimacy of local political structures.

The Ulgulan thus constituted an existential counter-assertion in the face of an external threat for the purpose of re-integration of the resources of traditional communal ownership - water, forest and land.

### 2.3 Ulgulan as Messianic Politics is Politics

Four decades of non-violent protracted agitation leading to the revolt under Sardari Larai in 1899-1900 had created constitutional facilities for redressing land grievances as through petitions and legal appeals before the massacre occurred. This breakdown of constitutionalism, worsened by colonial bureaucracy, was a sign of disavowal of faith in state mediated justice and the opening up to messianic armed revolt under Birsa Munda.

The leadership of Birsa gave unity between religious revitalisation and radical political mobilisation and through this instituted the monotheistic Birsait faith. The Birsait identity was the ideological basis that was needed to organise and mobilise people on a mass scale, overcoming existing social boundaries and sacrality of the land. The strategic acumen of Munda movement is estimated by the fact that it attacked the whole character of the oppressive nexus, the British colonial rule, the local exploitative feudal lords, and even the Christian missionaries with a campaign united under the concept of *topi topi ek topi* (all hat wearing men are the same breed). This recognition highlights that the Adivasi struggle was essentially a political protest against the domination of outsiders, which was different from the agrarian unrest.

The Ulgulan prompted this act of British people to introduce the Chota Nagpur Tenancy Act (CNT Act) in 1908. While ostensibly protective, the main role of the legislation was to codify and limit the Adivasi rights in the villages under the legal authority of colonial rule in India. By codifying and circumscribing Adivasi rights, the state wished to control conflict and bring stability in the region, and not political autonomy in the spirit of *Abua Raj*. This strategy set a blueprint for legislative participation in the post-colonial period, which continued to achieve the goal of securing rights while maintaining the sovereignty of the developmental state as a whole.



### **3. Methods**

The research methodology used for this study is a mixed qualitative methodology.

- (i) Critical textual analysis of the provisions of the Constitution (Fifth schedule), PESA(1996) and Selective State Panchayati Raj Act;
- (ii) Comparative review of judicial pronouncements and government/NGOs reports for tracing the outcomes of implementation;
- (iii) Sociological synthesis of published ethnographies & movement literature (Pathalgadi, Khuntkatti) so as to allow situating the legal dynamics in experienced social practice.

### **4. Results and Discussion**

#### **4.1 Constitutional Promise and the Anatomy of Statutory Dilution**

The Fifth Schedule to the Indian Constitution gives particular government arrangements in relation to Scheduled Areas (SA) due to the significance of the social, cultural and political isolation of the Advises. After the 73 rd amendment of the constitution that required decentralisation came the Panchayats (Extension to Scheduled Areas) Act (PESA) 1996, which was largely formulated on the recommendations of the Dilip Singh Bhuria Committee. PESA was modelled to correct a historical anomaly of the centralised state ruling the tribal people, by giving extension to the Panchayati Raj as well as aligning them with the native self-rule.

PESA explicitly opens that the state legislatures should invest in the Gram Sabha non-neglectable powers, which include:

- a) Protecting traditions, customs, cultural identity and community resources (such as customary dispute resolution).
- b) Obligatory discussions in front of land acquisition or resettlements to make development projects.
- c) Domination over local plans and resources and facilities in any of the social fields, and possession of small forest produce.

#### **4.2 The Mechanisms of Structural Evasion.**



**The process of PESA implementation in the ten planned states has been marked by a inconsistent political compliance to ensure that the innovative tribal resource-maintenance and centralization continues with the effect of institutionalized erosion of the Act's core provisions.**

#### **4.2.1 State Legislative Non-Alignment and Jurisdictional Incongruence.**

PESA provides that state laws have to be aligned with its provision, but many state-level Panchayati Raj Acts have been found to be inconsistent and irreconcilable with the Central PESA Act. As example, the Jharkhand Panchayati Raj Act (JPRA), 2001 has been subjected to heavy criticism over the missing out of necessary provisions of PESA, especially the express authority of the Gram Sabha to avert land alienation. This omission facilitates the prioritization of land acquisition objectives, such as the creation of land banks for industrial interests as was evident in the moment of the Jharkhand summit. Furthermore, the political will required for legislative compliance is absent, with several studies and government reviews indicate that multiple PESA states have delayed or incompletely framed the rules necessary for full implementation. According to the Ministry of Tribal Affairs (2023), no state has achieved complete operationalization of PESA provisions in letter and spirit.

#### **4.2.2 Bureaucratic Substitution of the Gram Sabha**

The principle of *Gram Sabha* supremacy—making the village assembly the core authority—is negated when states transfer power to higher bureaucratic tiers. The Andhra Pradesh State Act, for example, assigns critical powers concerning land acquisition, tribal sub-plans, and control over social sector functionaries not to the *Gram Sabha*, but to the **Mandal Parishad** (the block-level Panchayat). This substitution is explicitly prohibited by the Central PESA Act, which dictates that Panchayats at a higher level should not assume the powers of a lower-level Panchayat or the *Gram Sabha*. Such administrative engineering ensures that control rests with bureaucratic and political elites, rendering the indigenous self-rule mechanism powerless and dependent on centralized revenue officers.

#### **4.2.3 The Operational Substitution of Consultation by Consent.**

***The most serious legislative flaw is the fact that it is the manipulation of the section 4(i) of PESA that states that before land is acquired, mining leases are applied, or resettlement, the Gram Sabha or Panchayat in the concerned level, should be consulted. State governments strategically exploit the disjunctive "or," deliberately bypassing the empowered Gram Sabha by consulting the less representative Panchayat at a higher level.***



Furthermore, the word "**consultation**" is legally interpreted as advisory, falling short of the **mandatory, binding consent** that the Bhuria Committee originally recommended. This discretionary power allows state administrations and the judiciary to disregard community resolutions, consistently favoring industrial and developmental land claims (such as large-scale mining projects) over community-based proprietary rights, effectively undermining the self-determination principle inherent in *Abua Raj*.

To translate Birsa Munda's principle of self-rule, this study proposes replacing PESA's advisory "consultation" clause with a model legal standard of Mandatory Prior Informed Consent (MPIC):

"No acquisition, resettlement, lease, or grant of prospecting or mining rights in Scheduled Areas shall proceed without the prior, free, and informed consent of the Gram Sabha, recorded through a quorum resolution and certified by the State Tribal Welfare Department.

## **5 Customary Law, Indigenous Traditions, and the Democratic Dilemma**

### **5.1 Customary Institutions and Identity Cohesion**

The conference sub-theme of Customary Law and Indigenous Institutions is central to the viability of PESA. The Munda political tradition relied on non-codified customary laws—governing dispute resolution, resource management (*Sarna, Sasandiri*), and communal rites—which provided solidarity and identity cohesion. PESA recognizes the right of the *Gram Sabha* to safeguard these customs and customary modes of dispute resolution, provided they are not inconsistent with the Constitution. These customary mechanisms ensured the social solidarity by the form of moral sanction and reciprocity instead of according power in order to maintain community responsibility despite the absence of formal bureaucratic structures.

Nonetheless, the contemporary state often does not accept the legitimacy of traditional, supra-village structures like the Parha (exercise with traditional inter-village bodies), instead trying to incorporate them within the rigid, legally defined three tier panchayat structure. This forced integration is creating a contradiction between the constitutional arrangement and the tradition-based organisation of Adivasis.

### **5.2 The Gendered Critique of Customary Law**

These indigenous institutions were not only the guarantee of administrative cohesion but also the deposit of the collective identity which preserved social order by sanctions based upon ritual and the principle of mutual responsibility, rather than power coercion.



In order to avoid a romanticising of indigenous institutions, what's needed would be a political science critique that recognises the internal challenges. Although historically Adivasi societies were ego-aligned in comparison to non-tribal systems, some of the customary laws are exclusionary, especially with respect to gender.

For example, customary law in the traditional Munda community often limits women's inheritance of immovable property like land, considered by many researchers and Adivasi women activists themselves.

The political dilemma of self-government is the one of balancing constitutional principles of equality with the protection of cultural identity. Hence, the platform of Abua Raj must go hand in companion with internal transformation so that the Indigenous sovereignty put together via Birsa Munda's legacy is indeed inclusive of each member of Adivasi groups and especially women who were active actors of Ulgulan but are unjustifiably missing from post-colonial political histories.

Similarly, Gram Sabha processes should be institutionalised to account for gender-disaggregated participation in decision-making to ensure at least one-third participation by women to make customary self-government gender-equitable. Adivasi women can be provided with legal literacy and leadership-training programs to balance the cultural autonomy with constitutional equality.

## **6. Ecological Sovereignty: Jal Jangal Jameen in the Modern State.**

### **6.1 The Extractive and Existential Paradigm**

Birsa Munda's insistence on Jal, Jangal, Jameen is an ecologically-all-inclusive political worldview in which the land, water and forests are not just everything; these are sacred, existential spheres in themselves. In fundamental opposition to this idea, the extractive paradigm of the modern developmental state considers these resources only as capital inputs for industrialization and thus expresses what Adivasis understand as a conquest of nature.

Munda's ecological politics continues today in those movements that use laws to protect forest rights. For instance, the Pathalgadi movement stood face-to-face with the move of the government of the state of Jharkhand to set up land banks, which was seen as a massive land grab resulting in the large-scale appropriation of land for resource extraction by corporate Players.



## 6.2 Pathalgadi Movement as the Assertion of Statutory Authority

The movement that was led by the Pathalgadis of Khuntedh in the middle of the historic Ulgulan is the most powerful modern manifestation of Munda's political heritage. The movement's central performance consisted of setting up huge slabs of stones (Pathalgadis), an age-old Munda ritual, one of whose faces was inscribed with the exact texts of the PESA Act and Fifth Schedule of the Constitution.

This conduct involves a sophisticated type of 'assertion of legal praxis', which is defined as acts in which oppressed groups demonstrate public precaution on statutory and constitutional provisions to exercise local self-governance in order to turn law on paper into a territorial, lived assertion of sovereignty. This performative reclamation of law and land is represented by the Pathalgadi stone slabs in which extracts from PESA, and the Fifth Schedule are carved out.

**6.2.1 Reclaiming Space and Law:** Adivasis physically demarcate village boundaries and jurisdiction and literally quote state statutes to define and implement de facto local autonomy, making the compliance with law a powerful political assertion of the rights in the face of the state.

**6.2.2 Political Mobilization:** The movement challenged the state directly on the Gram Sabha's right to deny the entry of 'outsiders' and control over local resources which in turn mandated the state to face its own inability to enforce its protective laws.

The state's counter, which involved legal action and criminal charges against participants, highlighted the official denial of substantive indigenous self-governance even in the context of constitutional prerogatives. The state embraces Birsa Munda's *symbol* (through statues and commemorative days) but actively suppresses the *substance* of his demand for self-rule.

## 7. Judicial Limitations and the Precarity of Protective Law

The Adivasi struggle is further complicated by judicial inconsistencies. While the Supreme Court's *Samata v. State of Andhra Pradesh* (1997) restricted private mining in Scheduled Areas, the force of identity-based rights is often superseded by subsequent central legislation, such as the **Coal Bearing Areas (Acquisition and Development) Act, 1957**, which allows industrial land claims to override protective laws .

Moreover, protective laws themselves can be weaponized against Adivasi communities. The **Forest Rights Act (FRA), 2006**, intended to secure customary rights, led to a crisis when In 2019, a Supreme Court order on implementation of the Forest Rights Act directed state governments to remove occupants



whose claims had been rejected, triggering widespread concern over potential evictions of individuals whose claims under the Act had been rejected. The mass evictions that followed highlighted the precarity of statutory rights when administrative mechanisms (claim verification and rejection) are flawed or biased, proving that the struggle against state exploitation continues regardless of the law's protective intent.

## 8. Conclusions

The historical claim of Abua Raj by Birsa Munda in the Ulgulan was an unquestionable political claim for indigenous self-determination. The efforts of the post-colonial Indian state to institutionalise this vision through the PESA has failed, due to the dilution of the system through structural incompatibility between legislation and practise, particularly because of subversion by the bureaucratic level of the Gram Sabha and because of the continuance of the loophole of discretionary power through the so-called 'consultation'. This failure testifies to an Persistent structural difficulty

to give up the centralized control over resource rich tribal territories, therefore perpetuating the colonial era political economy of dispossession.

The contemporary Pathalgadi movement and current legal struggles for the recognition of the absolute continuity of the quest for substantive indigenous sovereignty are confirmation of the fact that the quest for substantive indigenous sovereignty is the central undecided constitutional mandate.

## 9. Recommendations for Radical Policy Regime Reform

In order to bridge the political-legal continuity, the perennial as well as profound gap between constitutional promise and political reality of Adivasi self-governance, the following radical institutional and legal changes are necessary:

### 9.1 Mandatory Legislative Consent:

a) Amendment of PESA to add a clause that will mandate Mandatory Prior Informed Consent (MPIC) of Gram Sabha before any acquisition/resettlement in any case.

b) Create a digital and physical Gram Sabha Consent Register to publicly document the resolutions in it (Gram Sabha Consent Registry);

c) Require all consents to be likewise verified by an independent State Tribal Rights Commission;



**9.2 Statutory Harmonization: Gram Sabha Supremacy:** The Union Government must monitor the state legislatures to statutory harmonization or substantially change all laws in conflict with the Constitution, including the Jharkhand Panchayati Raj Act, to local resources and prevent land alienation, PESA and the Dilip Singh Bhuria Committee to the panchayats.

**9.3 Capacity building and Political Education:** A comprehensive and centrally monitored programme of legal and political education needs to be taken up. This programme needs to specifically address issues around the nurturing of the institutional capacity of Gram Sabhas by giving them financial autonomy, means, and technical expertise as well to effectively exercise the powers provided for by PESA and FRA, in order to counter the apathy of administration and political interference at the grassroots level.

## **10. Global Contemplation and Theoretical Speculation**

Other indigenous self-determined experiments such as the Bolivian Buen Vivir system and the First Nation self-determination agreements in Canada for example demonstrate that effective indigenous autonomy must be supported by legal heterodoxy premised on moral solidarity. Birsa Munda's Abua Raj anticipates this model, presenting an Indian precursor to contemporary global debates on decolonial governance.

### **Author Contribution**

Souzatya Dutta came up with the main research question, developed the theoretical framework on the relationship between Abua Raj and statutory governance and conducted a close legal examination of the PESA and the Fifth Schedule.

Satabdi Patgiri provided sociological corroboration of the ethnographic accounts concerning the Pathalgadi movement, aided in the critique of the relationships between genders within customary law, and proofread the manuscript to make sure they are interdisciplinarily consistent.

### **Conflict of Interest**

**The authors confirm that there is no conflict of interest with regard to the publication of this paper.**



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