

Am I a 'desh drohi' ?

Stan Swamy

During the past two decades I have identified myself with the Adivasi People and their struggle for a life of dignity and self-respect. As a writer I have tried to analyse the different issues they are faced with. In this process I have clearly expressed dissent with several policies, laws enacted by the govt in the light of the Indian Constitution. I have questioned the validity, legality, justness of several steps taken by the govt and the ruling class.

As for the *Pathalgadi* issue, I have asked the question "Why are Adivasis doing this?" I believe they have been exploited and oppressed beyond tolerance. The rich minerals which are excavated in their land have enriched outsider industrialists and businessmen and impoverished the Adivasi people to the extent there are starvation deaths taking place. They have had no share in what is produced. Also, the laws and policies enacted for their well being are deliberately left unimplemented. So they have reached a situation where they realise 'enough is enough' and are seeking to re-invent their identity by empowering their *Gram Sabhas* through *Pathalgadis*. Their action is understandable.

Some questions that I have raised are as follows:

1) *I have questioned* the Non-implementation of the 5th Schedule of the Constitution

[Indian Constitution, Article 244(1)]clearly stipulates that a '*Tribes Advisory Council*' (TAC) composed solely of members from the Adivasi community who will advice the Governor of the State about any and everything concerning the protection, well-being and development of the Adivasi people in the State. The Governor is the constitutional custodian of the Adivasi people and he/she can make laws on his/her own and can annul any other law enacted by the parliament or state assembly always keeping in mind the welfare of the Adivasi people. **Whereas the reality is** that in none of the States during all these nearly seven decades has any State Governor ever used his/her constitutional discretionary power to reach out to the Adivasi people proffering the excuse that they have to work in harmony with the elected government of the State. The meeting of the TAC takes place rarely, and it is convened by and presided over by the Chief Minister of the State and is controlled by the ruling party. TAC has thus been reduced to a toothless body. Verily a constitutional fraud meted out to the Adivasi people.

2) *I have questioned* why the *Panchayats (Extension to Scheduled Areas) Act [PESA],1996*

[No:40 of 1996] has been neatly ignored which for the first time recognized the fact the Adivasi communities in India have had a rich social and cultural tradition of self-governance through the *Gram Sabha*.

Whereas the reality is this Act of the parliament has deliberately been left unimplemented in all the nine states. It means the capitalist ruling class does not want the Adivasi people to self-govern themselves.

3) *I have questioned* the silence of the govt on Samatha Judgment, 1997 of the Supreme Court [Civil Appeal Nos:4601-2 of 1997] which came as a huge relief to the Adivasi communities in Scheduled Areas. It came at a time when consequent to the policy of globalization, liberalization, marketisation, privatisation national & international corporate houses started to invade particularly the Adivasi areas in central India to mine the mineral riches. The govt machinery gave its full cooperation to these companies. Any resistance by the Adivasi people was put down with an iron hand. The judgment was meant to provide some significant safeguards for the Adivasis to control the excavation of minerals in their lands and to help develop themselves economically.

Whereas the reality is the state has ignored this verdict of the highest court. Several cases have been filed by affected communities but the 'law of eminent domain' of the colonial rulers are invoked to alienate Adivasi land and to loot the rich mineral resources.

4) *I have questioned* the half-hearted action of govt on Forest Rights Act, 2006: [Act of Parliament No:2 of 2007] *jal, jangal, jamin*, as we know, are the basis of the economic life of the Adivasi people. Of particular importance is their traditional rights in the forest have been infringed upon systematically over the decades. At long last, the govt came to the realization that a historic injustice has been done to the Adivasi and other traditional forest-dwellers. To correct this anomaly it enacted this Act.

Whereas the reality is far from desirable. From 2006 to 2011 of its operation, about 30 lakh applications were made all over the country for title-deeds, of which 11 lakhs were approved but 14 lakhs were rejected and five lakhs were pending. Of late the Jharkhand govt is trying to bypass the Gram Sabha in the process of acquiring forest land for industrial set up.

5) *I have questioned* the inaction of the govt to carry out the SC order 'Owner of the land is also the owner of sub-soil minerals'. [SC: Civil Appeal No 4549 of 2000] wherein it has said "we are of the opinion that there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process."

The rich minerals in their lands are being looted by the govt and private companies. The Supreme Court has declared 214 out of the 219 Coal-Blocks in the country illegal and ordered their closure and levied a fine on them for their illegal mining. But the Central & State Govts have found a way out by re-allotting these illegal mines through auction to make it look legal!

6) *I have questioned* the reasons why SC observation is being ignored that 'Mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or

incitement to violence . [SC: Criminal Appeal No: 889 of 2007] . The court rejected the doctrine of 'guilt by association'.

It is common knowledge that very many young men & women are held in prison on the suspicion of being “helpers of naxalites”. After arresting them other penal clauses are added on. It is an easy label that can be put on any one whom the police want to catch. It does not require any proof or witness. Supreme Court says even membership in a banned organisation does not make a person a criminal. How far removed are the law and order forces from the judiciary!

7) *I have questioned* the recently enacted Amendment to ‘Land Acquisition Act 2013’ by Jharkhand govt which sounds a death-knell for Adivasi Community. This does away with the requirement for “Social Impact Assessment’ which was aimed at safeguarding the environment, social relations and cultural values of affected people. The most damaging factor is **the govt can allow any agricultural land for non-agricultural purposes.** So any and every thing can be included.

8) *I have questioned* ‘Land Bank’ which I see as the most recent plot to annihilate the Adivasi people.

- During ‘Momentum Jharkhand’ in February 2017 the govt announced that 21 lakh acres in Land Bank of which 10 lk acres is ready for allotment to industrialists.
- ***Gair-Majurwa*” land** (= uncultivated land) can be ‘*khas*’ (= *private*) or ‘*aam*’ (= common). As per tradition, individual adivasi families or communities have been in possession and use this land [jamabandi]. Now the govt shockingly cancelled all ‘jamabandi’ titles and claims that all ‘gair-majurwa’ land belongs to the govt and it is free to allot it to any body (read industrial houses) to set up their small and big industries.
- **People are in the dark** about their land is being written off. The TAC has not given its approval as is required by the Vth Sched., the respective *Gram Sabhas* have not given their consent as required by PESA Act, affected adivasi people have not given their consent as required by Land Acquisition Act (2013).

**Above are questions I have consistently raised.
If this makes me a ‘desh drohi’ then so be it !**