

# Guilty until Proven Innocent

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For the civil liberties and democratic rights movement in India, conditions of undertrials are of great importance. One of the staggering characteristics of India's prison population is the fact that out of 3,82,000 prisoners there are only 12,700 convicts. Indeed, according to the online data site, *IndiaSpend*, there are 22.2 million undertrials in India, whose trials are yet to conclude and that in 2013, in 85% of the cases trial was pending. We know little about these faceless undertrial prisoners and what the charge-sheets claim to be their crime. Why is it that when most undertrials—more than 22 million—remain free, 3,69,000 languish in jail? What social background do they come from? What is their economic situation? What are their stories? Here lies the significance of this study, brought out by Bagaicha, a collective of activists and writers. The study tells us about Adivasi undertrials of Jharkhand. It is, by no means, a complete story. But the great merit of this survey is that it takes us through the history of Adivasis from early days to now, introduces the role played by Naxalites, in particular the Maoists, and then provides readers case studies that bring the faceless numbers to life.

The report notes its “primary objective” was to “highlight, and document the state repression on Jharkandis who fight for their human and constitutional rights.” It is ambitious in trying to provide “detailed information required by the Supreme Court about Adivasis languishing in various jails of Jharkhand,

**Deprived of Their Rights over Natural Resources, Impoverished Adivasis Get Prison: A Study of Undertrials in Jharkhand** by Bagaicha Research Team, Ranchi, Jharkhand, 2016; ₹100.

Odisha and Chhattisgarh.” It might have been useful if the report had referred to the case before the Supreme Court, in which this matter came up.

The study also aims to understand “the consequences for Adivasis to be so accused and arrested.” And finally “objective of this study” is also to examine the reasons “that cause the spread of LWE [left wing extremism] in predominantly Adivasi regions” (p 20). Although the study sets itself a tall order, it does come close to its objective.

There are 18,220 prisoners in Jharkhand's 26 jails (five central, 17 district and four sub-jails)—as against an actual capacity of 14,243 prisoners, constituting 128% occupancy as against an all-India average of 118%. Of these 31% are Adivasis, who comprise 26% of the state's population, 30% are Other Backward Classes (OBCs), who comprise 28% of Jharkhand's population, and 16% Dalits who are 11% of the population.

## Naxal Offence

After describing the methodology adopted for this study—which combines qualitative interviews with quantitative data, and includes primary and secondary sources—the report profiles the 102 prisoners surveyed for this study. The researchers were denied access to jail inmates; left with no choice the team

decided to get in touch with those they knew were out on bail. So it was not a random sample but a somewhat structured one: the 102 respondents were ones who could be reached. All of them were charged under, what has come to be known as “Naxal offence” and that shows in the social profile because out of the 102 surveyed 69% are Adivasis, 22% are OBCs, and 7% Dalits—the others are just 2%.

The survey brings out the fact that those accused of “Naxal offence” could simply have been protesting against land acquisition or forest diversion. The fact that upper caste/class is marked by its absence in “Naxal offence” is not fortuitous but symptomatic of India's, in this case Jharkhand's, social reality. The Dalits, Adivasis and OBCs are charged, as the report says, for being members/supporters of a banned organisation or for helping the proscribed organisation. They are deemed guilty if they share food with members of such organisations or if so-called “banned” literature is found in their possession.

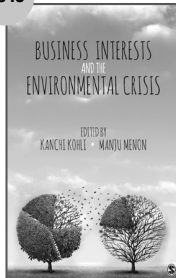
The socio-economic profile then acquires significance. Age profile of prisoners shows that 68% were in the age group of 18–40 years; this rises to 89% if the age group 41–51 is added. So, an overwhelming majority of people are those who are in the working age group. Therefore, their incarceration and long drawn out and expensive criminal trials affect their families in myriad ways.

The survey shows that 78% were married, 17% unmarried, 2% were widows, 2% widower and 1% divorced. Moreover, 63% were peasants, 17% casual labour, 11% self-employed, 4% were para teachers, 2% homemakers, 1% government employees and 2% were students. As for education, 21% had done intermediate exams, 22% high school, 7% matric, 7%

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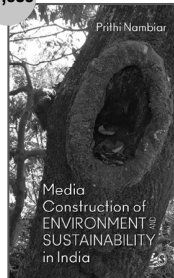
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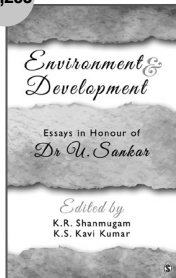
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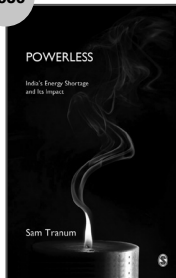
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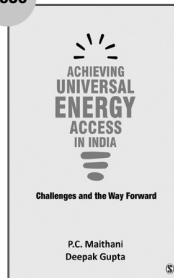
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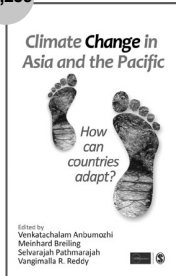
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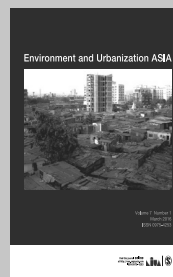
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middle school, 13% primary school, 10% were literate, 15% illiterate and only 5% were graduate with BA. As for landholdings, 9% had no land, 8% owned less than 0.49 acres, 12% owned more than 0.50 acres but less than one acre land, 23% owned more than 1 acre, 14% 2 acres plus, 22% between 3 and 5 acres, 6% 7–9 acres, 1% 10-plus acres and 5% provided no information about landholdings. Monthly household incomes show that 59% earned less than ₹3,000 a month, 38% less than ₹5,000, 1% earned more than 5,000, and 2% had nil income.

Finally, the survey shows that whereas in 1992 and 1998 only 1% of those surveyed got arrested, there was a spurt post 2000 when Jharkhand got formed: 20% were arrested between 2001 and 2005; 33% from 2006–10 and 43% between 2011 and 2015. In other words, 98% were arrested after Jharkhand state was formed. But what it does not tell us is how many of the 102 were female under-trials. They refer to 2% widows, but not how many of the other categories comprised females and what percentage.

### Coercion and Surrender Dramas

The survey then takes us through the history of “Naxalism,” tracing it from its early days to now, and brings out the plight of the Adivasis who have seen their land and forest being alienated from them through legal legerdemain, which lawfully divests Adivasis of their access to and control over forests. “Sometimes extreme oppression can embolden those who are fighting...,” says the report.

It shows that 40% of land in Scheduled Areas is with the government after the settlement of 1963–65. In such a situation, emergence of “armed criminal gangs” offering protection and selling terror makes life more difficult. The survey refers to a nexus between politicians, mafias, industrialists, contractors, bureaucrats as well as the Maoists. However, they go on to claim that forceful opening of areas where the Fifth Schedule of the Constitution operates and land forest rights of the Adivasis are formally protected are facilitated through what passes for “counter-extremism measures.” But the report says that by depriving

people of their access to common property resources such as land, forest, waterbodies, making little investments in rural infrastructure, and instead encouraging commoditisation and corporatisation (p 43) as well as deployment of military and use of colonial laws show a multipronged attack on Adivasis.

In such a situation people desperate for survival get trapped into participating in “surrender” dramas enacted by the government forces. Promise of government jobs first sees Adivasis having to pay bribes, then their arms are twisted to participate in a stage managed performance of “surrendered Maoists” only to see themselves incarcerated in security force camps.

The report speaks of how Adivasis are kept ignorant of charges framed against them, or do not have recourse to legal assistance. There are very few who speak their language or care about the distress caused to their families. Most of those arrested have been charged with either helping Maoists or for possessing Maoist literature.

Finally, Chapter 4 describes a few individual cases. This is rich with details and other useful information. This slim, 127-page report is quite remarkable for bringing to life a slice of India’s reality about which so little is known or spoken about. Chapters 2 and 3, notwithstanding their summary form, are particularly useful for familiarising us with the

social context. As for the survey, it goes beyond numbers by giving us a human dimension and takes us through both the Naxalite movement as well as the legal regime which confronts the Adivasis, ostensibly to protect their rights, only to see them violated with impunity.

However, the report could have done with some editing. It is not typos or grammatical errors that irk, but matters of substance get marred by poor editing. Errors and sloppiness undermine the report’s credibility. And that is a pity. For instance, we do not know which laws the report is referring to when on page 53 it says that the police have mentioned “various sections such as 144, 147, 148, 149 of Criminal law” and then adds that Section 17 of Criminal Law too is invoked. Surely the report meant Indian Penal Code in the first instance. This could have been rectified had the report been edited. All this is particularly true for the case studies where the reader is confronted by unevenness in case details. There is a need for a new edition with necessary improvements, precisely because the report does go some distance to plug critical lacunae in our understanding of Adivasis, their struggles, story of their repression, and the tyranny of law which subjects the marginalised to a ruinous legal process.

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