Abstract The article attempts to find reasons for violations of the Environmental Impact Assessment process, perpetrated by multinational companies Vedanta and POSCO in Odisha, India. Vedantas mining proposals led to Indias first environmental referendum and POSCO is scheduled to be the biggest Foreign Direct Investment in India, upon completion. Suggestions to mitigate flaws have been offered. Judicial pronouncements of the Supreme Court on Vedantas bauxite mining and refinery project in Niyamgiri, have been analysed. The POSCO project site in Kujanga and its proposed mining site in Khandadhar are located in highly fragile ecosystems. Hence, POSCO is facing and is scheduled to face even more opposition from the local indigenous people of those areas. The article argues that biodiversity and the laws relating to it must be attributed importance, in order to safeguard endangered flora and fauna species from extinction. Biodiversity laws per se should be effectuated to protect forests and the species living in them. The approach adopted while conserving them, should be ecocentric, not anthropocentric. Environment cannot continue being a pawn in the hands of human beings, being exploited and destroyed for human activities like mining and industrialisation at such a large scale. An equitable balance must be maintained.

Keywords Biodiversity Anthropocentrism Odisha POSCO Vedanta

# Introduction

Minerals are finite national wealth, as their ownership lies with the State. Though India is a socialist state, most of our mineral wealth is exploited by a handful of

private entities,[1](#_bookmark0) who pay scant regard to environmental laws, flouting them openly for earning windfall profits. These minerals lie under the same lands, which hold most of Indias biodiverse forests and river systems that are largely inhabited by the Indias poorest and marginalised peoplethe Scheduled Tribes (STs) and Scheduled Castes (SCs) depend on those very forests and watersheds for their survival.[2](#_bookmark1)

Long years of mining and ancillary projects have devastated their forests, leading to depletion of the ecosystem rendering it far more exposed to natural calamities, and rendering those people displaced and more vulnerable, socially and economically. The situation is likely to worsen, as the government tries to continue its industrialisation drive, pegged at exploiting its vast natural resources without investing much thought or action in safeguarding its people and environment.[3](#_bookmark2) This expounds why tribals and corporate miners are old adversaries, which is evident from various envirosocial movements that have put up unrelenting resistance over decades, against large extractive projects all over the country.

Having tribals (STs) who constitute 22.85 % of its population and forests that constitute 37.34 % of its geographical area,[4](#_bookmark3)Odishathe most mineralproducing Indian state[5](#_bookmark4) is an ideal microcosm of the aforementioned panIndian scenario. In the past two decades, Odisha has witnessed widespread envirosocial movements against industrial projects in Niyamgiri, Dhinkia, Kashipur, Gopalpur, Kalinganagar and various other parts of the state.

Since it is impossible to discuss all those industrial projects *in extenso*, the author would discuss only two *causes celebres:* the Vedanta Aluminium project at Niyamgiri in Lanjigarh, Kalahandi; and the POSCOIndia project at Kujanga in Jagatsinghpur district, and examine the existing and prospective environmental repercussions, if both get fully functional in Odisha.

Both have attained national importance on different counts. While the former served as the reason for Indias first environmental referendum, the latter would be the biggest Foreign Direct Investment (FDI) in India, upon completion. But both cry out the same story of how governments have consecutively preferred money over welfare of people.

# The Niyamgiri Crusade against Vedanta

Niyamgiri is a bauxiterich hill range spread across the borders of Kalahandi and Rayagada districts in southwestern Odisha, predominantly inhabited by the Kandha tribe (mostly Dangaria and few Kutia Kandhas). The UKbased Vedanta Resources entered into an Memorandum of Understanding (MoU) with the state government in

1997 to setup an integrated bauxite mining and refinery project including a captive powerplant. It entered into a joint venture with the Odisha Mining Corporation (OMC) in 2003 to mine bauxite in Niyamgiri. In 2004, the Ministry of Environment and Forests (MoEF) granted Vedanta, Stage1 Environmental Clearance (EC) to set up the refinery, which started functioning in 2007. Again in 2007, Vedanta applied for permission for expansion of the refinery from 1 to 6 MTPA and power generation from 75 to 300 MW.

* 1. An overview of the biodiversity in Niyamgiri

Niyamgiri Hills are covered by dense inviolate forests. Two major rivers and over 38 perennial streams flow from the hills. The forests are historically recognized for its immensely rich wildlife population and biodiversity. It has also been proposed to notify it as a wildlife sanctuary, which has been approved by the MoEF in 1998. This area has been constituted as an Elephant Reserve in 2004.[6](#_bookmark5)

Niyamgiri has more than 602 floral species (including 70 species of medicinal plants and 31 species of orchids).[7](#_bookmark6) About 6 floral species[8](#_bookmark7) and most of the 25 species of mammals[9](#_bookmark8) found here are enlisted under the International Union for Conservation of Natures Red Data Book.

* 1. Prospective impact of mining in Niyamgiri

Bauxite deposits situated on the peaks of the hills are porous, which makes them good waterretaining aquifers. Bauxitemining will destroy the aquifers resulting in the drying up of streams, rivers and underground water resources leading to desertification of the area.[10](#_bookmark9) About 121,337 trees will have to be cut in case the mining lease is granted; and 363,000 shrubs and ground level flora would also be cleared.[11](#_bookmark10) Further, expansion of the refinery will add thousands of tonnes of dust, sulphur dioxide and nitrogen oxide.[12](#_bookmark11) Tribals are already suffering from chronic diseases due to dust pollution and water contamination caused by the refinery.

Both Dangaria and Kutia Kandha tribes have been enlisted as Particularly Vulnerable Tribal Groups (PVTGs).[13](#_bookmark12) They reside in Lanjigarh, Kalahandi which is a Scheduled Area.[14](#_bookmark13) They identify their very existence with Niyamgiri. They hardly depend on anything else for their sustenance. They believe that their deity *Niyam Raja Penu* owns Niyamgiri, and everything belongs to him. Hunting, cutting and felling of trees on Niyamraja range continues to be a taboo.[15](#_bookmark14)

Mining will not just ensue massive displacement but also threaten their survival and would destroy their economic, social and cultural life.[16](#_bookmark15) Hence, the Kandhas have been fighting by staging relentless protests spearheaded by the Niyamgiri Suraksha Samiti, a peoples organisation.

* 1. Vedantas legal battle

The MoEF granted in principle approval stipulating certain conditions, for diversion of the 660.749 ha of forest land for mining in 2007. Vedanta Aluminum Limited (VAL), a subsidiary of Vedanta, approached the Supreme Court (SC) seeking for clearance of the proposal for use of 723.343 ha laFRAnd (including 58.943 ha reserve forest land) in Lanjigarh for setting up the alumina refinery project.

In the *First Vedanta* case,[17](#_bookmark16) the SC rejected VALs prayer while giving liberty to its holding company Sterlite Industries (India) Ltd. (SIIL) to operate the mines under a Rehabilitation Package and modalities to subserve the principle of sustainable development.

Unconditionally agreeing to the suggested Package, SIIL moved the SC with the same prayer as VAL, upon which the court granted clearance to the forest diversion proposal for diversion of 660.749 ha of forest land in favour of SIIL to undertake mining on the Niyamgiri Hills in the *Second Vedanta* case.[18](#_bookmark17)

Throughout the entire procedure for obtaining clearances, Vedanta along with the Odisha government concealed the real facts to get Environmental Clearances (EC) from the MoEF. Numerous instances of grave statutory violations have been documented in various factfinding reports submitted by the Central Empowered Committee (CEC) and the *N.C Saxena Committee* constituted by the MoEF.[19](#_bookmark18)

As per the findings of both the Committees, Vedanta continued to violate various provisions of the Environment (Protection) Act (EPA), 1986, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA),

2006, the Forest (Conservation) Act (FCA), 1980, the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996 and various other statutes.

In the meanwhile, the MoEF granted in principle approval for diversion of forest land for mining on December 11th, 2008 and granted the EC for mining on April 28th, 2009. Consequently, the state government applied for StageII (final) forest clearance on August 10th, 2010, which was rejected by the MoEF on August 24th 2010, citing grave statutory violations (as per the *Saxena Committee Report*), as primary reason for the said rejection.

OMC moved the SC against this rejection order seeking a *writ of certiorari* to quash it. The SC in the *Third Vedanta* case,[20](#_bookmark19)held that it was for the Gram Sabhas of the affected villages to decide whether and to what extent mining would affect the customary and religious rights of the indigenous people of Niyamgiri. It held that if as per the Gram Sabha, such rights were affected, then those must be protected and preserved.

Accordingly, the Dangarias and others from affected villages were asked to voice their decision, a historic exercise that was dubbed as the countrys first environmental referendum. Though 112 villages with 8000 tribals and dalits residing in them fall within the Niyamgiri hill range, and directly depend upon it for their survival, the Odisha government selected only twelve villages that lie within

1.5 km radius of the hills, and fall within the mining zone, for conducting the referendum.[21](#_bookmark20)It had selected only five, but later added seven more villages, upon the insistence of the Tribal Affairs Ministry.[22](#_bookmark21)

Nevertheless, all twelve Palli Sabhas[23](#_bookmark22) (Gram Sabhas) emphatically denied Vedanta anything of Niyamgiri by claiming religious and customary rights over the entire Niyamgiri Hills. Keeping that in view, the MoEF then *rejected* StageII clearance to Vedanta for mining bauxite on January 10th, 2014. However, the alumina refinery is still operative sourcing bauxite from other sources.

# Dhinkia: epicentre of antiPOSCO movement

The worlds fourthlargest steelmaker,[24](#_bookmark23) Pohang Steel Company (POSCO) of South Korea entered into an MoU with the Odisha government in 2005 to set up a 12 MTPA integrated steel plant including a mining project and captive port, at Kujanga in Jagatsinghpur district. With a proposal to invest Rs. 52,000 crores (about USD 12 billion),[25](#_bookmark24) POSCO would be the largest FDI in India till date upon completion.

20 (2013) 6 S.C.C. 476.

21 Arunima Mishra, *Rule of Thumb*, BUSINESS TODAY, Sep. 15, 2013.

22 Manipadma Jena, *Voices From Niyamgiri*, 48 ECON. & POL. WKLY. 35 (2013).

23 Orissa Grama Panchayats Act, 1964, No.1 of 1965, 2.

24 POSCO, *Corporate Overview*, POSCO (2010), [http://poscoindia.com/website/company/corporate](http://posco-india.com/website/company/corporate-overview.htm) [overview.htm](http://posco-india.com/website/company/corporate-overview.htm) (last visited Mar. 12, 2015).

25 POSCO, *Investment*, POSCO (2014) [http://poscoindia.com/website/project/investment.htm](http://posco-india.com/website/project/investment.htm) (last visited Mar. 12, 2015).

The project required 1620.4 ha of land of which 1253.2 ha is forest land,[26](#_bookmark25) on which 280,000 trees[27](#_bookmark26) have to be felled. Since 2005, there has been almost no progress on ground as yet, as the project was severely opposed by the residents of Dhinkia, Gadakujanga and Nuagaon pachayats in Erasama block of Kujanga. Their fight continues till date, led by the POSCO Pratirodh Sangram Samiti (PPSS).

Many instances of human rights abuse, including police lathi charge and firings on peaceful protesters resulting to grievous injuries; foisting false cases etc. have been committed in the meanwhile. The author attended the National Convention of Peoples Struggle at Dhinkia, where 400 delegates from various social movements across the country convened in November 2014. Abhaya Sahoo, president of the PPSS spoke about the 250 cases registered by government officials against 3000 protesters (his own name features in 50 of them and he has been arrested twice already). Other speakers at the Convention recounted similar experiences.