

Indigenous Rights Monitor

A Quarterly Newsletter of
Indigenous Rights Advocacy Centre

Message from the Executive Director

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Dear friends and colleagues,

The National Crime Records Bureau (NCRB) under the Ministry of Home Affairs has released its annual crime report for the year 2021 recently. As per the report, there is 6.4% increase in crimes against Scheduled Tribes (STs) from 8,272 cases in 2020 to 8,802 cases in 2021. Another horrible statistic is that the country registered a total of 1,324 cases of rape of ST women and children in 2021, which means that 3.6 tribal women and girls were raped every day! And, this is only official figures.

Impunity for the crimes against indigenous peoples is all pervading. While the chargesheeting rate in 2021 is 81.4, the conviction rate is merely 28.1. While accessing justice, indigenous peoples face challenges right from registration of complaints at the police stations. In the case of custodial torture of Anil Kumar Singh (42 years), a tribal farmer, First Information Report (FIR) submitted by the victim has not been registered even after six months. He was picked up by the Jharkhand Police in the middle of the night of February 23, 2022 on the charges of supporting the Maoists, and inflicted such torture that skin peeled off in his both buttocks. Despite instructions from Chief Minister Hemant Soren (a tribal himself) and later an order from Latehar district court dated August 22, the police have not registered an FIR against the accused police officials at the time of writing this. Similarly, in the case of killing of Bramhadev Singh (24 years) as an alleged Maoist by the security forces in Kuku-Piri forest under Garu police station in Latehar district (Jharkhand) on June 12, 2021, a fact-finding report by Jharkhand Janadhikar Mahasabha found the encounter to be fake. The deceased's widow, Jiramandi Devi had to move the Latehar district court in October 2021 which directed the police to register an FIR. But the police allegedly refused to comply with the court's order. So, on November 20, 2021 she filed a writ petition in the Jharkhand High Court. Finally, on March 31, 2022, the Jharkhand Police registered an FIR against eight security personnel, including a Deputy Commandant of the Central Reserve Police Force (CRPF), for "murdering" Bramhadev Singh and "destroying the evidence".

This is why IRAC's actions to combat criminalization of and violence against indigenous peoples and impunity enjoyed by the state and non-state actors are so important.

RIGHTS VIOLATION UNDER THE LENSE OF IRAC

Telangana: Criminalization and violence against tribals for collecting Mahua flowers

On March 27, 2021, the forest staff allegedly tortured 16 women and 8 men belonging to Lambada tribe when they entered into the Amrabad tiger reserve in Nagarkurnool district of Telangana to collect Mahua flowers. The mahua flower is a major livelihood source for the tribals, particularly in the tribal belt of Madhya Pradesh, Chhattisgarh, Odisha, Andhra Pradesh, Telangana and Jharkhand. Mahua flower is one of the non-timber forest produces (NTFPs), also called Minor Forest Produce which are legally accessible from any kind of reserved forests by the tribals under the Forest Rights Act, 2006. But in this instant case, after collecting the flowers when the Lambada tribals were spending their night in the forest some forest staff suddenly attacked them in the middle of the night. The victims alleged that they were undressed/stripped and beaten by the forest officials. One of the victims, K Patya (48 years) who received injuries on his head, told the media: “After collecting flowers, we were sleeping in the forest when officials suddenly attacked us in the middle of the night. They forced us to strip and they started beating us. They even beat up a 70-year-old woman.”

The Mahua flower has been described as “the backbone of the adivasi economy”. And one commentator writes, “Mahua flower is one of the most important non-timber forest produce (NTFP), playing a major role in the tribal economy of the country. The economic importance of mahua can be gauged from the fact that nearly three-fourth of entire tribal households in the country are involved in collection of mahua flower, which indicates approximately 7.5 million individuals are in this livelihood activity. The collection and trade of mahua flowers provides employment to 28,600 persons per year, whereas, the potential is 163,000 persons per year, notes a 2019 research paper, Mahua (*Madhuca indica*): A boon for tribal economy.” (<https://www.gaonconnection.com/read/mahua-flowers-tribal-communities-ativasi-festive-mood-economy-livelihood-central-india-harvest-wellness-madhya-pradesh-prosperity-50614>)

In order to seek justice against the inhuman atrocity committed by the forest staff against the Lambada tribals, Indigenous Rights Advocacy Centre (IRAC) filed a complaint with the National Human Rights Commission (NHRC) which promptly registered a case (Case No. 1086/36/22/2021) and sought an action taken report from the concerned authority. However, after much delay, a report dated December 20, 2021 was submitted by the Principal Chief Conservator of Forests, Government of Telangana. The forest chief of Telangana Mrs R. Sobha in her report stated that the tribals had illegally entered into the Tiger Reserve to collect Mahua flowers and therefore they have been booked under different charges such as Wildlife offence case vide POR 1-47/2021, dated March 27, 2021 U/s 27,29, 30, 31 of Wildlife (Protection) Act, 1972.

The NHRC sought response from the IRAC. In its response dated March 7, 2022, IRAC clarified two things:

First, the tribals had entered into the tiger reserve to collect Mahua flowers which is a Minor Forest Produce (MFP). The Scheduled Tribes have forest rights relating to all types of MFP as defined under Section 2(i) of the Forest Rights Act. Section 3(1) of the Forest Rights Act states,

“For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;
- (b)
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d)....”

Section 2(i) of the FRA defines the term “minor forest produce” to include “all non-timber produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like”. Hence, the tribals have the right to go into the forest lands of any type, including protected forests, reserved forests, Sanctuaries, Tiger Reserve, and National Parks, to collect Mahua flowers which is an MFP. If the forest department denies this right to collect MFP to tribals, then it constitutes violation of the Forest Rights Act.

Second, the report of the Principal Chief Conservator of Forests, Government of Telangana has admitted that “injured persons” were admitted at the Government Hospital. The report states, “Accordingly, the Forest Range Officer, Achmpet attended to the “injured persons” at the Government Hospital. Sri P. Rajashekar, IFS, the Forest Divisional Officer, Achampet and Sri Y. Srinivas, Forest Divisional Officer, Flying Squad visited the injured at the Hospital. Even the District Collector, Nagarkurnool and MLA, Achampet, have visited the Hospital when the above officers were there.” From this statement, it is clear that the tribals were tortured by the forest officials as stated in IRAC’s complaint. IRAC argued that even if the tribals were camping inside the Amrabad tiger reserve as alleged by the Forest Department, the forest officials do not have the right to torture the tribals. The United Nations Convention Against Torture (UNCAT) in Article 2(2) states, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” The Constitution of India also protects right to life under Article 21.

Therefore, the tribals were wrongfully harassed and criminalized and false cases have been lodged against them which is violation of the Forest Rights Act and the Scheduled Castes/ Scheduled Tribe (Prevention of Atrocities) Act. Therefore, the IRAC requested the NHRC to reject the investigation report submitted by Smt R. Sobha (PCCF, Telangana) and direct the CB-CID to investigate into the matter. IRAC also requested the NHRC to direct

the Chief Secretary, Government of Telangana to immediately drop the charges against the tribals registered under the Wildlife (Protection) Act, 1972. On March 25, 2022, the NHRC directed the Chief Conservator of Forest, Telangana to submit additional report in light of comments of the complainant within period of four weeks but no report has been submitted as yet. A conditional summon issued to the Principal Chief Conservator of Forest, Telangana vide order dated June 3, 2022 went unanswered. Therefore, the NHRC on August 4, 2022 issued fresh conditional summon of the Principal Chief Conservator of Forest, Telangana “to appear in person before the Commission” on September 27, 2022. However, in case the requisite report is submitted on or before September 20, 2022 his personal appearance shall be dispensed with.

Fighting impunity: A timeline of the case

March 27, 2021: Torture of Lambada tribals by forest staff

May 31, 2021: IRAC moves NHRC

June 30, 2021: NHRC issues notice to the Chief Conservator of Forests, Govt of Telangana to submit report within four weeks

September 1, 2021: Since no report is received, NHRC issues fresh reminder to the Chief Conservator of Forests, Telangana to submit report within six weeks

November 8, 2021: NHRC takes “serious view” of non-submission of report; issues ‘conditional summon’ to the Chief Conservator of Forest, Telangana to appear before the Commission on January 3, 2022 along with requisite reports.

December 20, 2021: The Principal Chief Conservator of Forests, Government of Telangana submits report

January 27, 2022: NHRC seeks comments from IRAC which was submitted on March 7.

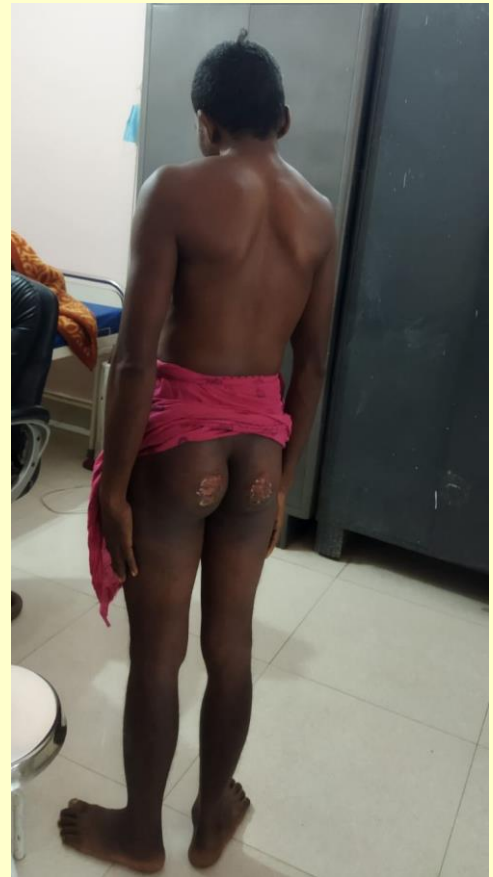
March 25, 2022: NHRC asks the Principal Chief Conservator of Forests, Telangana to submit additional information in the light of the complainant’s comments, within four weeks

June 3, 2022: NHRC issues ‘conditional summon’ to the Principal Chief Conservator of Forests, Telangana to appear in person before the Commission on 18.07.2022 along with a copy of additional report.

August 4, 2022: Still no report is submitted. NHRC issues fresh conditional summon to the Principal Chief Conservator of Forest, Telangana “to appear in person before the Commission on 27.09.2022”. However, in case the requisite report is submitted on or before 20.09.2022 his personal appearance shall be dispensed with.

RIGHTS VIOLATION UNDER THE LENSE OF IRAC**Height of impunity: Police refused to register FIR despite court order and CM's instruction in the case of custodial torture of Anil Kumar Singh in Jharkhand**

In the midnight of February 23, 2022, a tribal farmer Anil Kumar Singh (42 years), Son of Late Chaman Singh, was picked up from his house on the charges of supporting/helping the Maoists and subjected to inhuman torture at the Garu police station in the Latehar district of Jharkhand. As per the victim, he was sleeping peacefully at his house at Kuku village in Latehar district when a police team led by Garu police station officer in-charge Ranjit Kumar Yadav knocked at the door and asked to open the door at around 1:00 AM on the intervening night of February 23-24. The police took Anil Singh to the Garu police station for interrogation. He was accused of helping the banned Maoists. When Anil Singh denied it, he was brutally beaten with sticks by Mr. Yadav and two other policemen. After merciless beatings, the police poured petrol down his anus and he fell unconscious. In the morning at around 9 AM of 24 February, the officer-in-charge Mr. Yadav told the victim that he was picked up by mistake and let him go home. Family members admitted the victim at the local Sadar Hospital with serious injuries. Skin peeled off in his buttocks. He was unable to walk or sit. The medical report of Singh provided by Sadar Hospital in Latehar indicated injuries.



Anil Kumar Singh's skin in both buttocks peeled off due to police torture

After Jharkhand Janadhikar Mahasabha, a coalition of human rights NGOs and activists, brought the barbaric torture to the attention of the state Chief Minister Hemant Soren (a tribal himself) via twitter, he instructed the police to investigate the matter and take strong action against the guilty policemen. Subsequently, Superintendent of Police, Latehar Anjani Anjan said a probe team led by Sub Divisional Police Officer (SDPO) Mahuadand Rajesh Kujur has been asked to investigate the incident. But police officials have been protecting their own colleagues. In order for any action to begin, a First Information Report (FIR) has to be registered, which is a fundamental right of any victim. But two police stations even refused to register an FIR filed by Anil Kumar.

First, Anil Singh went to the local police station (Chhipdohar) on March 2, 2022 (since he was picked up from his home which comes under Chhipdohar police station) to file complaint against Garu police station officer in-charge (OC) Ranjit Kumar Yadav. But Chipadohar police station OC Sujit Tiwary refused to register his complaint and instead asked him to go to the police station where the incident took place and he also allegedly said that since Special Investigating Team (SIT) has been formed to probe into it, a separate FIR cannot be lodged (*Telegraph*, March 4, 2022). Thereafter, on March 4, Anil Singh went to file FIR at the SC/ST police station, Latehar but he was turned away. He has also approached the Superintendent of Police, and the Deputy Commissioner, Latehar to no avail.

Finally, on March 25, Anil Kumar Singh filed a case in the court of additional district judge seeking the registration of an FIR against the accused police officials. On August 22, the court of first additional session Judge Latehar, Sanjeev Kumar Das directed the record office of the court to send the copy of Anil Kumar Singh's "complaint under Section 156(3) of CrPC to Latehar SC/ST police station for investigation and institution of an FIR".

Yet, even after eight days (as on August 31), the Latehar SC/ST police station has not registered an FIR. *Telegraph* reported that Latehar SC/ST police station officer-in-charge, Phaguni Paswan claimed ignorance about any court's order. "We are yet to receive any court order on that case. As soon as we get the court's order we will institute an FIR," said Paswan. Incidentally, Latehar district court and the SC/ST police station are barely two kilometres away. (*Telegraph*, August 31, 2022)

It is clear that the police officials are protecting their colleagues who are accused of torturing the complainant (Anil Singh). In such scenario, it is not difficult to imagine the difficulty ahead for accessing justice. It sounds incredible that as basic as an FIR has not been lodged despite the Court's order and the Chief Minister's instructions!

6.4% increase in crimes against STs in 2021 as per Govt data

The National Crime Records Bureau (NCRB) under the Ministry of Home Affairs has released its annual crime report for the year 2021 recently. As per the report, cases of atrocities/crimes against Scheduled Tribes (STs) have increased by 6.4% from 8,272 cases in 2020 to 8,802 cases in 2021. The only silver lining is that this increase in 2020 over 2019 was much higher at 9.27%

While the chargesheeting rate in 2021 is 81.4, the conviction rate is merely 28.1.

India registered a total of 1,324 cases of rape of ST women and children in 2021, against 1,137 cases in 2020, i.e. an increase of 16.4%. Out of 1,324 rape cases, 512 cases were rape of children (i.e. below 18 years).

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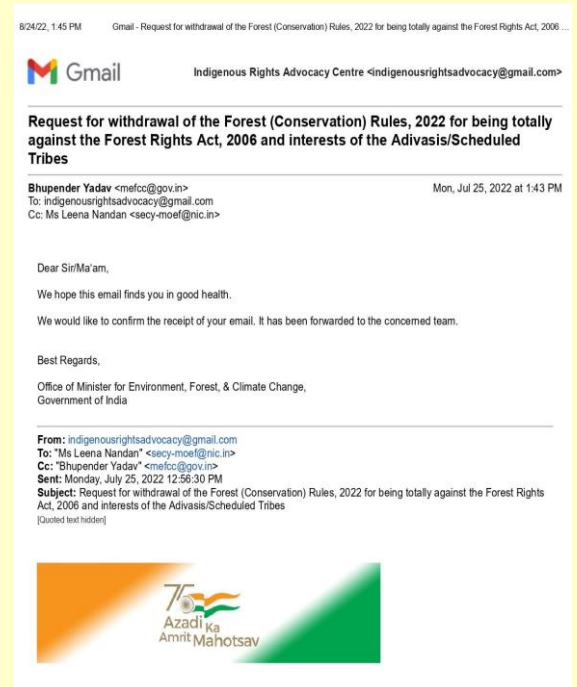
IRAC seeks withdrawal of Forest (Conservation) Rules 2021 for being anti-tribal

On July 25, 2022, IRAC submitted representation to the Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India, New Delhi, with the demand to withdraw the Forest (Conservation) Rules, 2022 for being totally against the Forest Rights Act, 2006 and against the interest of the Adivasis/Scheduled Tribes.

The Ministry had notified the Forest (Conservation) Rules, 2022 on June 28, 2022 which has been criticised by the civil society and tribal rights groups, in particular. The IRAC pointed out that the Forest (Conservation) Rules, 2022 runs afoul of the Forest Rights Act 2006 which requires the Government to obtain free, prior and informed consent of Scheduled Tribes and other forest dwellers through their Gram Sabha before allowing a project on their forest land. The erstwhile Ministry of Environment and Forests (MoEF) through a circular issued on August 3, 2009 asked all the State Governments to ensure strict compliance of the Forest Rights Act, 2006 before diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980. The MoEF also

asked all state governments to submit evidences in the form of a letter certifying that the complete process of identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion and a letter of consent from the concerned Gram Sabha to the proposed diversion.

In 2013, the Hon'ble Supreme Court in *Orissa Mining Corporation Ltd v Ministry of Environment and Forest & Others*, popularly known as the Vedanta judgement, has upheld the authority of the Gram Sabha to safeguard the rights of traditional forest dwellers. Hence, the consent of the Gram Sabha is mandatory before approval for diversion of forest land is given. This is what the Forest Conservation Rules 2022 have done away with.



Screenshot of the response from Office of the Minister for Environment, Forest & Climate Change, New Delhi

Rule 9(6)(b)(ii) of the Forest Conservation Rules 2022 states:

“(ii) The State Government or Union territory Administration, as the case may be, after receiving the ‘Final’ approval of the Central Government under Section 2 of the Act, and after fulfilment and compliance of the provisions of all other Acts and rules made thereunder, as applicable including ensuring settlement of rights under the Scheduled Tribes and Other Traditional Forest Dwellers(Recognition of Forest Rights) Act, 2006 (No. 2 of 2007), shall issue order for diversion, assignment of lease or dereservation, as the case may be.”

This means that the rights of the Adivasis/Scheduled Tribes will be settled and their consent will be taken under the Forest Rights Act or other laws by the state government only after “final” approval had already been granted by the Central Government for the diversion of the forest area. This is total dilution of the Forest Rights Act and other laws such as the Panchayat (Extension of the Scheduled Areas) Act, 1996 (PESA) applicable in Fifth Scheduled Areas. Approaching the Gram Sabha after the final approval was granted would render the Gram Sabha’s role irrelevant, the forest clearance a *fait accompli* (that is, the Gram Sabha will have no option but to agree), and the powers and duties of the rights holders under the Forest Rights Act redundant.

The new Forest Conservation Rules provide that the state government *shall* issue order for diversion, assignment of lease or dereservation, as the case may be, which makes it mandatory for the state government to issue the said order.

Therefore, the Forest Conservation Rules 2022 will, without any doubt, make the Adivasis/Scheduled Tribes extremely vulnerable to violence, threats, harassment, forced displacement and grave injustice in the process of land acquisition for public or private companies.

IRAC has also submitted similar representation to the Hon’ble President of India, Smt Droupadi Murmi, Rashtrapati Bhavan, New Delhi.

The Office of Minister for Environment, Forest, & Climate Change, Government of India has acknowledged receipt of the IRAC’s petition and forwarded it to Ms Leena Nandan, Secretary of MoEFCC for necessary action.

IRAC's interventions with NHRC

During June 1, 2022 to August 31, 2022, the Indigenous Rights Advocacy Centre (IRAC) has intervened in a total of 15 cases of human rights violation of the Scheduled Tribes/indigenous peoples with the National Human Rights Commission of India. These included two cases of custodial death due to alleged torture in police custody, one case of custodial torture in police custody, one case of police torture (non-custodial), one case of killing by forest officials, two cases of torture by forest guards, three cases of violence against children, one case of violence against women, one case of torture by non-tribals, one case of burning down of huts and destruction of crops, one case related to social boycott and one case of death of tribal woman due to alleged medical negligence.

Geographically, these cases are spread across the country. Out of the 15 complaints filed with the NHRC, 4 cases were from Madhya Pradesh followed by 2 cases each from Mizoram, Assam, Maharashtra, and Odisha, and one case each from Telangana, Rajasthan and Jharkhand.

Nature of violations	Total number of Cases
Custodial death (police custody)	2
Custodial torture (police)	1
Torture by Police (non-custodial)	1
Killing by forest officials	1
Torture by forest guards	2
Violence against women	1
Violence against children	3
Torture by non-tribals	1
Burning of huts/destruction of crops	1
Social boycott	1
Death due to medical negligence	1
TOTAL	15

State	Total No. of Cases
Madhya Pradesh	4
Mizoram	2
Assam	2
Maharashtra	2
Odisha	2
Telangana	1
Rajasthan	1
Jharkhand	1
TOTAL	15

IRAC's impacts


11 Irular families provided land and houses by Tamil Nadu Govt

Following IRAC's intervention with the NHRC, all the 11 tribal families belonging to Irular tribe who were evicted by the Revenue department near Murugan temple in Peranamallur municipality in Tiruvannamalai district of Tamil Nadu on October 1, 2021 have been allocated housing sites and houses. These families were evicted without prior notice or providing an alternate accommodation, thus making them homeless during the COVID19 pandemic. On October 14, 2021, the NHRC sought action taken report from the District Magistrate/Collector. But no report was submitted despite issuance of a reminder on January 25, 2022. On June 2, 2022, the NHRC had to use its special powers to issue summon to the District Magistrate, Tiruvannamalai to appear in person before the Commission on July 27, 2022 along with the required information/ documents. In response to the directions of the Commission, a compliance report has been received from the District Collector, Tiruvannamalai informing the Commission that all the 11 Irular tribal families have been provided Patta (land title) for housing sites by the Revenue Department and they were also allotted houses under Chief Minister's Solar Powered Green House Scheme.

Jharkhand: PVTG families issued ration cards and provided foodgrain including backlog of three months

On October 21, 2021, IRAC had written to the NHRC to complain against reported starvation of 8,000 tribals including Particularly Vulnerable Tribal Group (PVTG) families, due to denial of ration in Garhwa District of Jharkhand for the last three months. Taking cognizance in the matter, the NHRC by an order dated November 16, 2011 called for action taken report from the Chief Secretary, Jharkhand and the District Magistrate, Garhwa. No report was submitted, so on March 8, 2022, the NHRC issued a reminder. On May 24, 2022, the NHRC issued summon directing the District Magistrate, Garhwa to personally appear before the Commission on June 29, 2022 along with the required information/ documents. This forced the District Magistrate to submit a compliance report. The report of the DM, among others (1) admitted that the tribals were denied ration for the months of August, September and October, 2021 and this backlog was cleared in November 2021 after NHRC's order; (2) all the identified families have been issued Antodaya Ration Cards and at present all the PVTG families are being provided ration through the Suvidha app; and (3) directions have been issued to provide all facilities as per government schemes to the PVTG families. The authorities, however, refuted the allegation of starvation among the tribal families.

Deceased's family paid ex-gratia: Following NHRC's intervention, the Odisha Govt paid an ex-gratia amount of Rs 900,000 to the next of kin of the deceased Kapil Majhi (32), a tribal who was killed by the Maoists in Kandhamal district of Odisha on February 14, 2022. IRAC had moved the NHRC against killing of Majhi on the charges of being a police informer.

This newsletter is published by *Indigenous Rights Advocacy Centre* to create awareness on human rights issues. It is for private distribution only. IRAC may be reached by post at: A-212, 1st Floor, Street # 23, Chattarpur Enclave, Phase 2, New Delhi- 110074, India; or by email: indigenoustrightsadvocacy@gmail.com. To know more about IRAC, do visit our website: www.irc.in Follow us  @irc_india