

The Bhima Koregaon Arrests and the Resistance in India

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It often happens: A murder takes place, an utterly foul one. But there is little outcry, no lasting sense of wrong in public memory. Deep down, everyone is aware of the gross violation that has taken place in their midst. Everyone is affected and silently appalled that there is no redress, no justice. Yet normal life and routine democracy continues—at the expense of a deep scar in the inner recess of society, unseen and perhaps illegible, best described as a void. Like an abyss that stares back, will this void come to haunt everyone later, in some possibly unrecognisable form?

I, of course, have a particular murder in mind: the cold-blooded murder of the revolutionary Maoist leader Cherukuri Azad by state forces on July 2, 2010, somewhere in the forests of Adilabad.¹ In the context of what seemed like a friendly atmosphere created by the possibility of ceasefire and peace talks between the Indian government and the Maoists, Azad acted as the key emissary of peace from the side of the rebels. He was murdered in a “fake encounter,” an utterly treacherous killing—what can be called an extrajudicial killing in human rights discourse.

The chief mediator of the talks, human rights activist Swami Agnivesh, was particularly incensed about the murder. He gave several shocked comments, including: “It looks like a very dirty encounter. [The government] has done vishwaasghaat [betrayal] with the talks. I am deeply pained by the developments. Yes, I suffer from a deep sense of guilt



Rona Wilson, accused of fomenting violence in Bhima Koregaon, while being taken into custody in 2018 (HT). [“Evidence was ‘planted’ in Bhima Koregaon case, U.S. firm finds,”](#) Mint, February 11, 2021.

¹ ↪ On the killing of Azad, see this report by a fact-finding team: All India Fact Finding Team on the Killing of Azad and H. C. Pandey, “Faking an Encounter: Killing the Peace Process,” People’s Union for Democratic Rights, October 8, 2010. See also Saroj Giri, “The Killing of Azad,” *Sanhati*, July 12, 2010.

now and I believe Azad died because, on [the government's] request, I intervened to take the peace process to its logical end."²

It is clear that Agnivesh felt guilt, but there is more to it than that. The "incident" was not an anomaly, but part of a pattern often overlooked by activists like Agnivesh. Srikant, who is aware of such patterns, politely responded to Agnivesh: "We do not have any iota of doubt regarding your genuine feelings on the peace process. I am afraid that you are a pigeon among the cats. The cats are using you to catch us in this process."³

Historians A Well-Worn Pattern

Agnivesh's guilt seems to come from his naivety in trusting the government. What is the pattern he and many others had overlooked? Did anyone ever highlight this "pattern" before or was it beyond everybody's understanding?

K. Balagopal, the outstanding civil liberties activist, identified this well-worn pattern surrounding peace talks several times. He described the 2004 "peace talks" with Maoists in the state of Andhra Pradesh as having begun like "a tenacious essay in political realism, [which then] entered a phase of sheer drama unbelievable in its unreality, and ended in the bitter rattle of gun fire."⁴

The deep state locking horns in the name of dialogue with the equally deep underground rebels could not be anything but "a tenacious essay in political realism." What is more salient is the move from "drama" to "bitter rattle of gun fire," due to the government's actions. Balagopal explains prosaically that "the Naxalites broke off [the talks] only after it became clear that the government had no intention of stopping the killing of their cadre."⁵

Soon after Azad's killing, the pattern was replicating itself in a slightly different space—this time in the state of West Bengal in 2011. The famous writer Mahashweta Devi denounced the Mamata Banerji government in West Bengal as fascist, after the state-sponsored killing of Maoist leader Kishenji who also participated in peace talks at the time.⁶ The new government had promised peace in Bengal and to try genuinely to address the questions raised by the movement. Instead, the opposite happened, and revolutionaries were murdered.

Take the report titled "When They Talked and Failed," published on the eve of the 2010 talks. It reminded readers of the 2004 peace process: "Though the talks failed, it was a windfall for Intelligence officers. For the first time, we took photographs and videotaped all of them. Until that time, we only had names and aliases of top leaders, but did not know what they looked like. We gathered a lot of information on them individually, an official says."⁷ This was a windfall, a "success" perfectly compatible with the failure of the talks.

His insights aside, Balagopal rather wrong-headedly seems to speak from the vantage point of a "neutral" activist dispassionately surveying the drama between the Maoists and the government. Clearly, we must also turn our gaze to the

² ↪ Ashish Sinha, "[Govt Sabotaged Talks with Maoists: Swami Agnivesh](#)," *India Today*, August 4, 2010.

³ ↪ Srikant, "[Open Letter to Swami Agnivesh](#)," *Sanhati*, August 4, 2010.

⁴ ↪ Balagopal, "[Have We Heard the Last of the Peace Talks?](#)," *Economic and Political Weekly* 40, no. 13 (2005).

⁵ ↪ Balagopal, "[Have We Heard the Last of the Peace Talks?](#)" 1329.

⁶ ↪ Sujato Bhadra, Kishenji, and Amit Bhattacharya, "[Debates on Lalgarh](#)," *Sanhati*, September 26 and October 10, 2009.

⁷ ↪ Sreenivas Janyala, "[When They Talked and Failed](#)," *Indian Express*, March 14, 2010.

very structure of civil society mediation, the internally skewed character and paraphernalia of so-called peace talks. The peace process from 2010 to 2012 helped set the stage for a major realignment of the relations between the deep state, civil liberties, democratic rights organisations, and the political class—providing crucial context regarding the events of 2018.⁸ What looked like the workings of a “robust democracy,” where civil society can play a major mediating role, turned out to be the prefiguration of an impending disaster.

Breaching the Pattern

Though the pattern continued, it was thus also breached in important ways. The deep state came looking for its fair share, its customary windfall and harvest, only this time they wanted more. They got greedier, more demanding. Not just of the “red cats” like Azad and Kishenji, but they wanted a taste of the “pigeons” too! Enter the Bhima Koregaon conspiracy case, involving the arrest and intimidation of activists under draconian laws.⁹

The Bhima Koregaon case is indeed the chronicle of a disaster foretold. Although officially dated to early 2018, the story was already clear in 2011. Mihir Desai, a defense lawyer deeply involved in the Bhima Koregaon case, dated the prefiguration even earlier. He recently suggested that the Bhima Koregaon arrests cannot be seen in isolation from those of Binayak Sen in 2007 and G. N. Saibaba in 2013–14.¹⁰ The metaphor he used was of a lion that has tasted blood for the first time and begins eating humans: “In the case of Binayak Sen and Saibaba, [the police] tasted blood and now [in 2018–20] they are going all out.”

A New National Security Architecture

In the run up to the post-2014 Narendra Modi era and the Bhima Koregaon arrests, between 2009 and 2013, an entire killing machine was spreading its tentacles under the watchful eyes of the earlier left-liberal political class.

The 2008 Mumbai terror attacks had already offered the Indian security establishment a “golden opportunity.” Soon after, the internal security architecture was revamped, sanctioned at the highest levels of the government and the parliament,

the then all-powerful home minister wanted the state to normalise the use of extrajudicial killings in the name of combating “terrorism.”

much like what happened in the United States after 9/11. Agencies like the National Investigation Agency, which is at the forefront of the repression today, were conceived and formed between 2008 and 2011, along with the insidious December 2008 amendment to the already draconian Unlawful Activities Prevention Act (UAPA) of

1967.¹¹ Sections like 43A and 43B were added, allowing the police to search, seize, and arrest any person without a warrant. Section 43D would allow the police to detain any person for a period of 30 days in police custody and a period of 180 days in judicial custody without a charge sheet. The Bhima Koregaon conspiracy case is built almost entirely on the basis of UAPA provisions.

⁸ ↪ The role of civil society vis-à-vis the state and rebels was debated in 2013, with contributions by Arun Ferreira (now in jail), filmmaker Anand Patwardhan, and activist P. A Sebastian: “Kabir Kala Manch Defence Committee: A Debate,” *Sanhati*, June 20, 2013. I separately weighed in on the role of Operation Civil Society vis-à-vis Operation Green Hunt, criticizing those within the progressive camp who called for “democratic counter-insurgency.” See Saroj Giri, “The Enchantments of Democracy: Some Notes,” *Sanhati*, June 8, 2010.

⁹ ↪ Sixteen activists were arrested, others interrogated, and yet others’ homes raided. It began in April 2018 with the first raids. One of the sixteen arrested, Father Stan Swamy, died in prison. Often called the Bhima Koregaon 16, or Bhima Koregaon 15 since Father Swamy’s passing, they are: Sudhir Dhawale, Rona Wilson, Surendra Gadling, Shoma Sen, Mahesh Raut, Varavara Rao, Sudha Bharadwaj, Gautam Navlakha, Vernon Gonsalves, Arun Ferreira, Anand Teltumbde, Hany Babu, Stan Swamy, Sagar Gorkhe, Ramesh Gaichor, and Jyoti Jagtap.

¹⁰ ↪ “Revisiting the Bhima Koregaon Conspiracy Case,” Free Them All, August 29, 2020.

¹¹ ↪ The UAPA was passed by the Indian Parliament in 1967 and amended several times. It deals with both unlawful activities and “terrorism.”

In a December 2009 lecture, P. Chidambaram, the then all-powerful home minister (a graduate of Harvard Business School) set the tone and direction of these changes.¹² He wanted India to remember that the use of violence against enemies is unavoidable, and without it no democracy can survive. You could clearly hear in these utterances a call for the state to normalise the use of extrajudicial killings in the name of combating “terrorism.”

The focus was not just on declaring something illegal or calling it terrorist or terror-related, but on “operations,”

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execution. He remarked: “I am clear in my mind that, without ‘operations,’ the National Counter Terrorism Centre and security architecture needed will be incomplete. It is the proposed ‘operations’ wing of the National Counter Terrorism Centre that will give an edge—now absent—to our plans to

counter terrorism.”¹³

Afzal Guru’s “Judicial Murder”

Not to be left out of the emerging new scenario, the Supreme Court of India “made history” in 2013 when it declared that Afzal Guru from Kashmir was to be hanged to “satisfy the collective conscience of society.” Guru was hanged on February 9, 2013. In a display of unfettered impunity, the court itself sanctioned the hanging on completely extrajudicial grounds, bypassing the need for hard evidence in a case of capital punishment.¹⁴

The highest court sanctioning what was effectively an extrajudicial execution meant we were entering a zone of indistinction between law and non-law, judicial and extrajudicial. The illegal is not just backed and supported, but produced, by the highest court of the land. We need to tease this out in conceptual terms to grasp the emerging scenario in India at the time, particularly the character of sovereign state power, the law, and the redefinition of a “new normal,” acceptable to the judiciary, big media, and large sections of the citizenry comprising the infamous “collective conscience of society.”

Let us recall here the Nazi jurist Carl Schmitt’s famous proposition that it is the non-law that produces the law.¹⁵ What he meant by this is that the extrajudicial, or the exception, possesses juristic status. He argues, “the exception remains, nevertheless, accessible to jurisprudence because both elements, the norm as well as the decision, remain within the

¹² ↪ “A New Architecture for India’s Security,” *Outlook India*, December 23, 2009, updated February 3, 2022.

¹³ ↪ “A New Architecture for India’s Security.”

¹⁴ ↪ Sanjay Hegde, “Does Our ‘Collective Conscience’ Lead Us to Hanging?,” Hindu Centre, June 5, 2017. The European Parliament also opposed the hanging of Afzal Guru. See Marie-Christine Vergiat et al. on behalf of the GUE/NGL Group, “Motion for a Resolution on India,” 2013/2640 (RSP), European Parliament, May 21, 2013. It was said: “A hanging when executed in secrecy becomes an extrajudicial execution in which the Minister of Home Affairs, the President and other constitutional authorities are complicit.”

¹⁵ ↪ Georg Lukács was among the many Marxists, along with Walter Benjamin, who saw merit in Schmitt’s critique of “neo-Kantian jurisprudence” while rejecting its ideological orientation. Lukács pointed out that “Schmitt conducted a violent polemic against neo-Kantian jurisprudence and its idea of the norm, which transformed the whole State into a network of hollow formal relations and regarded the State as just a kind of ‘accounting point.’” Schmitt’s Nazism derives from the orientation of his critique of liberal constitutionalism toward ensuring that the theological core of society directly prescribes a corresponding political organization unmediated by the self-referential legal and constitutional apparatus of liberalism. This theological core could easily be the Nazi vision of the racially pure society of the Aryan/Nordic myth, or it could be a step toward, as Lukács points out, the direct rule of the monopoly-capitalist class. Fascism would however present this move in terms of initiating an “authentic revolution.” As Lukács points out, as fascism increasingly armed itself for the “revolutionary” seizure of power, there arose the need both to present this as an authentic revolution and to conceal the monopoly-capitalist character of the whole movement. Regarding the liberal defense of the Bhima Koregaon 16, we can say, with Lukács, that we can trace an “unsubstantiated dogmatism masquerading as strict epistemology by which neo-Kantianism converted justice into an autonomous, self-legitimizing area, on the pattern of its epistemology or aesthetics.” Georg Lukács, *The Destruction of Reason* (New York: Merlin Press, 1980), 646, 653.

framework of the juristic.”¹⁶ The exception and the extrajudicial are not just “sociology,” but “jurisprudence.” According to Schmitt, “the exception is that which cannot be subsumed; it defies general codification, but it simultaneously reveals a specifically juristic element—the decision in absolute purity.”¹⁷

The state’s decision to indulge in extrajudicial killing is not a spurious decision. It cannot forever be treated as an aberration, a deviation from the norm. It must be understood as a “genuine decision,” not a degenerate one—“the decision in absolute purity.”¹⁸ It is only when a juridical status is attributed to the extrajudicial killing, a “genuine decision” taken at the highest political level, that the state can be made properly accountable and responsible. The extrajudicial killing must be seen for what it is, the operation of sovereign power itself, rather than what the sovereign power should not be, or could have in its “right mind” avoided doing.

Activists like Agnivesh decide on behalf of the state that the extrajudicial killing is a “degenerate decision,” castigating the state and its decision-makers while seeking to reinforce faith in the very system. Human rights activists want to hold the state accountable, “expose” it for violating its own laws and constitution—which can be a very useful tactic, but can also have disastrous consequences when it is the only political framework. This tactic, when generalised, starts to impersonate the state, in an imagined ideal-typical form, neurotically chasing the figment of a supposed true and pristine constitutional state on which we are never allowed to give up “hope.” And purportedly, no amount of evidence of extrajudicial killing and state terror can sully the image of such an imaginary supra state with which the activist overidentifies and seeks to defend a democracy bound to such a state.

Thus, while refusing to openly accept Schmitt’s insight on the juridical status of the extrajudicial, the activist secretly buys into the rhetoric of the “miracle,” of the “decision,” of the extrajudicial that makes the normal functioning of democracy possible. Walter Benjamin rejects this metaphysical or reified conception of the “miracle.” Against the state’s sovereign exception highlighted by Schmitt, Benjamin proposes a real “state of exception” from the vantage point of the proletariat.¹⁹

In the eighth section of his “Theses on the Philosophy of History,” Benjamin writes: “The tradition of the oppressed teaches us that the ‘state of exception’ in which we live has become the rule. We have to find a concept of history corresponding to this. Then our task will come to be the creation of a real ‘state of exception’; and in this our position in the struggle against fascism will improve.”²⁰ The “real state of exception” is one that does not establish or preserve the law, does not accept the supposed powers of the sovereign exception to make the normal functioning of democracy possible. Instead, it makes law redundant, deposes it forever, opening up new horizons and possibilities.

For Benjamin, the state of exception does not enervate the rule or the norm. Rather, the exception and the rule together define a zone of indistinction, rather than a relationship of priority or subservience. Benjamin’s notion of the “real state

¹⁶ ↪ Carl Schmitt, *Political Theology* (Chicago: University of Chicago Press, 2006), 12.

¹⁷ ↪ Schmitt, *Political Theology*, 13. Astute readers might find Schmitt’s decisionism disconcerting, the way Lyotard found Alain Badiou’s notion of political subjectivity disconcerting because of its strong parallels with Schmitt’s decisionism. Unfortunately, we do not have time to go into this here. On this see Nina Power, “Towards an Anthropology of Infinity,” in *The Praxis of Alain Badiou*, ed. Paul Ashton, A. J. Bartlett, and Justin Clemens (Melbourne: Re-Press, 2006), 309–38.

¹⁸ ↪ Schmitt criticizes those who emphasize “merely a degenerate decision, blind to the law, clinging to the ‘normative power of the factual’ and not to a genuine decision.” Schmitt, *Political Theology*, 3.

¹⁹ ↪ Where Benjamin agrees with Schmitt is on the question of the function of violence, of the extralegal, in judicial creation. In his *Critique of Violence*, he writes: “for in the exercise of violence over life and death more than in any other legal act, law reaffirms itself.” Walter Benjamin, *Critique of Violence*, in *Reflections*, ed. Peter Demetz (New York: Schocken, 1978), 286.

²⁰ ↪ As translated by Jacob Taubes in his *To Carl Schmitt: Letters and Reflections* (New York: Columbia University Press, 2013).

of exception” thereby escapes both the founding of law and its preservation. It allows us to understand extrajudicial violence as having a juridical status, but without its supposed “miracle” effect, thereby marking a departure from both the human rights and Schmittian frameworks. Jacob Taubes points out: “Schmitt’s fundamental vocabulary is here introduced by Benjamin, made use of, and so transformed into its opposite. Carl Schmitt’s conception of the ‘state of exception’ is dictatorial, dictated from above; in Benjamin it becomes a doctrine in the tradition of the oppressed.”²¹

Saibaba’s Arrest

With the amendments in the UAPA and the establishment of the National Investigation Agency, the state and its exceptional violence were ominously advancing, while the critics and “pigeons” waded in rhetorical critiques of state repression. Even as the National Investigation Agency identified and deployed “designated authorities” to execute the non-law (such as extrajudicial killings), activists could never identify these agents of the anonymous deep state. We did not know then and do not know now who in the government is responsible for the killings of Azad and Kishenji.²² This activist fog has gotten thicker since the rise of Pegasus spyware. Only the government or state in its abstraction can be held responsible and accountable, but no one in particular, no specific agencies or personnel.

In this emerging scenario, in September 2013 there was a raid on the residence of professor G. N. Saibaba (along with cases against five others—Prashant Rahi, Mahesh Tirki, Panda Narote, Vijay Tirki, and Hem Mishra).²³ This raid was carried out by some of the same police officers from Maharashtra who would later conduct the raids and arrests in the 2018 Bhima Koregaon case. It was clear that those killing the rebel leaders, the red cats, would be soon coming after the pigeons.

Enter Modi

Yet, significant changes came with the Modi regime’s ascension to power in 2014. The deep state could now do by day

With Modi significant changes came. The deep state could now do by day what it had been doing by night, the covert transformed into the self-laudatory overt operation. The Modi government stands for the desire to convert the extrajudicial into official government policy, satisfy the “collective conscience of society,” and win big electoral mandates.

what it had been doing by night, the covert transformed into the self-laudatory overt operation. The Modi government stands for the desire to convert the extrajudicial into official government policy, satisfy the “collective conscience of society,” and win big electoral mandates. Unlike the earlier governments, Modi’s ministers (Modi himself often kept silent) would openly own up and instigate the “anti-terror” operations that would boost his

“strongman” image and “hard state” agenda. Marrying electoral democracy with a reactionary Hindutva ideology, the Modi regime now endows the Indian state with a self-justificatory ideological-cultural mission. The traditional anticommunism of the Indian democratic establishment, mostly ambient and occasionally violent, will now reach a

²¹ ↪ Taubes, *To Carl Schmitt*. Taubes cites Benjamin’s December 1930 letter to Schmitt as evidence. He is very critical of Theodor Adorno, who refused to publish the letter in a collection on Benjamin.

²² ↪ In 2015, political leader Abhishek Banerjee, the nephew of the chief minister of West Bengal, declared that their government was responsible for the killing of Kishenji four years earlier.

²³ ↪ N. Saibaba is an activist associated with the revolutionary movement in India and a teacher of English literature at the University of Delhi. He is physically disabled, moves in a wheelchair, and is currently in prison serving a life sentence imposed in 2017. Prashant Rahi, “Appeal for Justice to Prashant Rahi,” *Sanhati*, April 5, 2014; “Condemn the Conviction of Mahesh Tirki, Pandu Narote, Hem Mishra, Prashant Rahi, Vijay Tirki and Gn Saibaba!,” Committee for the Release of Political Prisoners, March 8, 2017.

feverish crescendo like McCarthyism on steroids, in the era of algorithmic social media and troll armies battling over what is “fake news” versus “truth.”

The term urban Naxal comes into currency, seeking to immediately conjure up the picture of a wide left-liberal ecosystem of “antinational conspirators” from the deep forests, bases of the rebels, to the posh bungalows and metropolitan university campuses. Prominent news channels regularly serve “breaking news” with “proof” and “evidence” that “urban Naxals” are in the payrolls of “foreign powers,” possibly Western countries, but more focused on China and Pakistan. Most of it is framed within the familiar “culture war” narrative, attacking left-liberal elites (often overlapping with “urban Naxal”) for insincerely weaponising a supposed belief in democracy and human rights only to undermine the inner tissue of “our culture,” the Hindu nation, their over-identification with “minority rights” a symptom of their rootlessness and elite collusion with the “globalist agenda.”

More specific to the repression in the name of Bhima Koregaon is the Brahminical Indian state’s deep fear of a possible convergence of the “hard left” Naxals with the wider anticaste movement, since Bhima Koregaon is a very powerful symbol of anti-Brahminical resistance within the larger Dalit community.²⁴ The *Elgaar Parishad* (Clarion Call) Conference organised alongside the popular Bhima Koregaon commemoration event of January 2018 was clearly left wing in orientation. These fears of a convergence go back to at least the 2006 Dalit resistance in the aftermath of the violent atrocities by upper castes in a place called Khairlanji in Maharashtra.

Elgar Case and Anticaste Radicalism

The broader subtext of Dalit radicalisation starting with Khairlanji is important to make full sense of the state’s repression against Bhima Koregaon. The mainstream of the Dalit movement has to a large extent dissociated themselves from this radicalisation. For Anand Teltumbde, this radicalisation is a good thing: “Khairlanji brings to the fore the irrelevance of [mainstream] Dalit politics and politicians and the rejection of them by ordinary Dalits.”²⁵

These fault lines between mainstream Dalit politics and the radical Dalit movement are very clearly mirrored in the attempts by mainstream Dalit politicians in Maharashtra to keep a distance from the supposedly radical Elgaar Parishad, clearly separating it from Bhima Koregaon, which is part of wider Dalit symbolism of martial prowess against Brahminical domination. The arrest of activists is now officially called the *Elgaar Parishad* conspiracy case, serving to delink the activists from the popular Dalit movement, rather than the Bhima Koregaon case.

The high point came in 2018, with the arrest of activists in the Bhima Koregaon case. The same police officers who first raided Saibaba’s house in September 2013 and then arrested him in May 2014, just before the formation of the Modi government, carried out the arrests in the Bhima Koregaon case. Take, for example, Suhas Bawache of the Aheri police department in Gadchiroli in Maharashtra, who conducted the raids on Saibaba’s house. He later joined the Pune police and helped carry out the Bhima Koregaon arrests.²⁶ Of all the officers who interrogated the arrested Bhima Koregaon activists, Bawache is known to be the most aggressive and abusive.

²⁴ ↪ See Saroj Giri, “Bhima Koregaon and the ‘Powers of the Other Shore,’” *Monthly Review* 73, no. 5 (October 2021).

²⁵ ↪ Anand Teltumbde, “Khairlanji and Its Aftermath: Exploding Some Myths,” *Economic and Political Weekly* 42, no. 12 (2007): 1019; Anuradha Gandhi, “Dalit Fury Scorches Maharashtra,” in *Scripting the Change: Selected Writings of Anuradha Gandhi* (Delhi: Daanish Books, 2011).

²⁶ ↪ Suhas Bawache was given an award by the chief minister of Maharashtra, Devendra Fadnavis.

Surendra Gadling, one of the arrested, has also highlighted the continuity between the Bhima Koregaon case and the previous government's arrest of Saibaba, saying that, when he was working as Saibaba's lawyer, police officers would openly threaten that he was "next in line."²⁷ G. K. Pillai, former home secretary and head of Operation Green Hunt, added: "There is nothing new in the Bhima Koregaon arrests, as the Congress government already started it years ago."²⁸ Indeed, high-ranking officers of the deep state from the earlier government are today senior advisors in the Home Ministry, including some who are surely behind the peace process's denouement.

Take, for example, K. Vijay Kumar, head of the police team that killed Kishenji in 2011. Kumar reported to Chidambaram in 2012 and has been advising home minister Amit Shah on left-wing extremism since December 2019. Then there are other masterminds of the deep state operating out of Andhra Pradesh and Telangana, such as K. Aravinda Rao, successor to the late K. S. Vyas, the brain behind the shadowy vigilante Andhra Greyhounds.²⁹ Rao's rather dated book, *Naxalite Terrorism: Social and Legal Issues*, is still quite crucial in grasping the way the Indian state thinks.³⁰ The ever-perceptive Balagopal noticed the book right when it was published in 1996, writing a very useful commentary on it and sending the message that we must read the works of those on the other side.³¹

Resistance Against Mining

The Bhima Koregaon arrests, however, cannot be understood only in terms of state repression. Let us take a closer look at the two registers in which the case unfolds, spread out across different cities and towns. The police first focused on Bhima Koregaon proper, concerning the local incidents in the village in Maharashtra that took place at the end of 2017 and early 2018 (including the Elgaar Parishad gathering of December 2017). Soon after, the police widened the ambit to include incidents and people elsewhere in Mumbai or Delhi, now to be brought under the title of the Bhima Koregaon conspiracy case. As though an afterthought, they fabricated and added more stringent clauses of sedition and terror, under the draconian UAPA, to build a narrative of a "terror plot," a "conspiracy against the nation." We can see a pattern here, as the center of gravity surreptitiously shifts toward the unfolding political struggle in Gadchiroli (which is in Maharashtra, the same state as Bhima Koregaon, and falls under the same local government).

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Big companies have been milking the land and forests of Gadchiroli and Surjagadh for its huge mineral riches for some time now.³² Gadchiroli is "a swathe of land that bears about 60% of Maharashtra's mineral wealth, which includes 17 minerals—including coal, limestone, iron ore and manganese-ore—with reserves of 5,753 million tonnes, or 22.56 % of

²⁷ ↪ Sukanya Shantha reports: "Saibaba's conviction has not just proved to be a major jolt to the human rights movement, as the rights defenders have argued in past year, it also landed Gadling in a vulnerable situation. Describing those several instances where he was 'targeted' by the state, Gadling told the court veiled and unveiled threats only intensified after he decided to take up Saibaba's case. 'The police officers investigating the case would casually tell me I was next in the line. They even went to the extent of planting false allegations in the media. This was happening when I was appearing as a professional lawyer in the court,' Gadling explained." Sukanya Shantha, "In Court, Surendra Gadling Provides Strong Rebuttals to Prosecution's Claims," *The Wire*, October 15, 2018.

²⁸ ↪ Operation Green Hunt was the "unofficial" name given to the paramilitary state operations, both covert and overt, against the Maoist movement from 2009 to 2013. It was dubbed the "War Against the People," mostly Indigenous (*adivasi*) people, by activists. Marya Shakil, "Congress Being Hypocritical, It Arrested Gautam Navalakha, Kobad Ghandy in Similar Crackdown: Former Home Secretary GK Pillai," *News 18*, August 30, 2018.

²⁹ ↪ Top hawks from within the deep state are rarely candid in public, but perhaps here is an exception: K. V. Sarma J., "Ex Dgp Aravinda Rao on 'Open Heart with RK,'" *Vivekitam*, August 26, 2012.

³⁰ ↪ Aravinda Rao, *Naxalite Terrorism: Social and Legal Issues* (Chennai: East and West Books, 1996).

³¹ ↪ Balagopal, "Naxalite Terrorists and Benign Policemen," *Economic and Political Weekly* 32, no. 36 (1997).

³² ↪ For a wide-angle view on the movement against mining in central India, see Sanjay Kak's documentary film *Red Ant Dreams* (2014).

Indian mineral reserves.” The mines feed into the big supply chains in the global economy via big corporations like Lloyd’s Metal and Energy Limited, Corporate Ispat Alloys, and Jindal Steel Works. “Between 2011 and 2014, 48 mining leases were approved in tribal areas across the country by the union ministry of mines.”³³

But there is also powerful resistance against this appropriation of resources by capitalist companies. Lalsu Soma Nagoti explains that the resistance is tied to the original inhabitants of the area, the adivasis.³⁴ Gadchiroli is therefore witness to not just opposition to the ruling party, but actual resistance against depredations by big capital and the state.³⁵ In fact, the resistance is oriented toward becoming an organ of dual power, in search of an alternative political subjectivity outside of the determinations of both constitutional and extraconstitutional sovereign power.³⁶ Not just a resistance to “capitalist excesses,” but a practical critique of India’s parliamentary democratic system.³⁷ Borrowing a term from Alain Badiou, we can say that the resistance is against capitalo-parliamentarism, a resistance whose inner contours will become clearer, relating to Benjamin’s notion of divine violence and the proletariat’s “real state of exception.”³⁸

The First Arrests

The Bhima Koregaon arrests occurred in phases, beginning with the arrests of Sudhir Dhawale, Rona Wilson, Surendra Gadling, Shoma Sen, and Mahesh Raut on June 6, 2018, and continuing with the interrogation, raids, and arrests of other activists. Nihal Singh Rathod, an on-the-ground activist lawyer in Gadchiroli and former assistant of Gadling, has written an incisive account of the situation.

The events occurred thus: a First Investigation Report was filed on January 8, 2018, concerning the Bhima Koregaon incident of January 1, 2018, charging the Elgaar Parishad, supposedly organized at the behest of Maoists, with inciting violence and riots. Police initially took no action on this first report, but it seems that someone in the deep state realized it was an opportunity not to be missed. Rathod recounts:

Though initially there was no inquiry on this [First Investigation Report], suddenly on March 6, 2018, Section 120B [waging war against the state] of the Indian Penal Code came to be added and the names of two suspects—namely Surendra Gadling and Rona Wilson—too were added. On March 8, 2018, ACP Swargate [police] sought a search warrant against Surendra Gadling, Sudhir Dhawale, Harshali Potdar, Rona Wilson, Sagar Gorkhe, Dhawala Dhengle, Ramesh Gaichor, Jyoti Jagtap, and Rupali Jadhav. However, the Judicial Magistrate of First Class rejected [it].³⁹

The “sudden” change in state demeanor noted here, marking a shift in police strategy, was accompanied by a “transfer” of the case from the Pune rural police to Pune urban police. The deputy mayor of Pune, Siddharth Dhende, and police

³³ ↪ Poorvi Kulkarni, “As Maharashtra Makes Big Mining Push, Tribals Push Back,” *Business Standard*, January 22, 2017.

³⁴ ↪ Satyen K. Bordoloi, “Pt4-Lalsu Soma Nagoti on Mining in Gadchiroli & Its Devastation in Adivasis,” YouTube video, October 14, 2018.

³⁵ ↪ See Vidhya, “[Secrets of Gadchiroli Game Plan](#),” *Raiot*, June 16, 2018.

³⁶ ↪ On the possibility of the radicalisation and generalisation of resistance, see Saroj Giri, “Lalgarh and the Radicalisation of Resistance: From Ordinary Citizens to Political Subject,” *MR Online*, July 9, 2009.

³⁷ ↪ For a recent work exploring the genealogy of the political subject outside of sovereign power in India, see Shruti Kapila, *Violent Fraternity* (Cambridge, MA: Harvard University Press, 2022). The book traces the idea of the political in India since the early twentieth century, which sought to decouple law from violence, “premised on the circumvention and denial of the state as the bearer of sovereignty” (15).

³⁸ ↪ Alain Badiou deploys this term, for example, in *The Communist Hypothesis* (London: Verso, 2010). Benjamin, *Critique of Violence*.

³⁹ ↪ Nihal Singh Rathod, “[One Year of Bhima-Koregaon Case: Part III](#),” *Leaflet*, January 9, 2019.

officer Mohammed Suvez Haq had even protested this transfer.⁴⁰ The focus of the investigation shifted from the “clash between two communities,” or the localized rioting per se, to the Elgaar Conference as supposedly the original instigator of the riots.

The search warrant sought by the police was initially denied by the court. On April 17, 2018, they managed to receive search warrants to conduct raids of the activists’ private residences.⁴¹ The addition of two names—those of Gadling and Wilson under the stringent 120-B clause of the penal code—indicated that the police worked out a plan to somehow implicate them. They figured out the blueprint to nab those like Gadling. Reports tell us that spyware including Netwire and Pegasus was used to plant false evidence in Wilson’s computers and mobile phone, subsequently seized by police in the raids.⁴² Such evidence was planted as late as the day before the raid.

The Gram Sabhas of Gadchiroli

Soon after the April 17 raid, things heated up in Maharashtra.

Little later in the same month, on April 22, 2018, a big operation was undertaken by police in which the authorities claimed to have gunned down 40 Naxals.⁴³ Various organisations then decided to conduct fact-finding over the issue and the same was being anchored by Surendra Gadling, Shoma Sen and Mahesh Raut, apart from other activists. They visited the villages in Gadchiroli district, where, true to their anticipation, it was revealed to be a cold-blooded massacre of several innocent people.

This fake encounter had taken place under the supervision and command of IG Naxal Shivaji Bodkhe, who now stands transferred to Pune, where he has taken over the supervision of investigation in the [Bhima Koregaon] case against activists.⁴⁴

This “fake encounter” was conducted by the same top police officer also leading the Bhima Koregaon investigation against the activists, Shivaji Bodkhe. What happened next? On May 5 and 6, 2018, after the fake encounter and a full month before the arrests on June 6, activists had set out to uncover the facts. After the visit, the activists had organized a press conference to publicly expose the police killings, after which they decided to approach the courts while simultaneously mobilizing the local population.

In the opinion of Gadling and Sen, Mahesh Raut was the ideal petitioner to knock the court’s door in public interest. However, Mahesh Raut was of firm opinion that instead of any individual, gram sabhas [popular village councils] from Gadchiroli district should petition the court. Thus, in consultation with all, he had approached

⁴⁰ ↪ Neeta Kolhatkar, “Bhima Koregaon Violence,” *Free Press Journal*, October 25, 2018.

⁴¹ ↪ Vivek Deshpande, “Bhima Koregaon: Pune Police Raid Prominent Activists’ Residences,” *Indian Express*, April 17, 2018.

⁴² ↪ “According to Arsenal’s report, just a few hours before Wilson’s house was raided on April 17, 2018, his computer was tampered with. The report shows that the last changes were made to his computer at 4:50 pm on April 16, 2018 and the very next day at 6 am, a team of the local Pune police, including then investigating officer Shivaji Pawar, had visited Wilson’s house in Munirka, New Delhi to carry out a raid.” Sukanya Shantha, “Incriminating Letters Were ‘Planted’ on Rona Wilson’s Laptop: US Digital Forensics Firm,” *The Wire*, February 10, 2021.

⁴³ ↪ See the full report by a forty-member fact-finding team that visited the area between May 5 and 7, 2018: Coordination of Democratic Rights Organisations, Indian Association Peoples’ Lawyers, and Women Against Sexual Violence and State Repression, *Encountering Resistance: State Policy for Development in Gadchiroli* (Maharashtra: Coordination of Democratic Rights Organisation and Progressive Printers, 2018).

⁴⁴ ↪ Rathod, “One Year of Bhima-Koregaon Case.”

many gram sabhas who had expressed their readiness and willingness to approach the court of law, seeking independent investigation and action against the cops.

In the meantime, media exposed that personnel involved in the operation were given a special treat by the State government and as a reward, they were sent on foreign tour for holiday.⁴⁵

Gram sabhas, popular village councils, not just individual activists, were now ready to petition the court—putting state forces in a tight spot and strengthening mass resistance. These were not just activists defending their civil liberties, but standing by the popular resistance that would rattle the police and state machinery. They were supposed to have a meeting on June 7 to decide their future course of action:

The three, along with other juniors of Gadling, decided to assemble on June 7, 2018, in Nagpur and take a final call on the legal strategy. Mahesh who was staying at his sister's place, had relevant evidence and documents which he had brought along with him. Morning hours of June 6, 2018 left many phones buzzing with the news that activists across India have been picked up by the Pune Police. Among the arrested were Surendra Gadling, Sudhir Dhawale, Rona Wilson, as well as, surprisingly enough, Mahesh Raut and Shoma Sen.⁴⁶

The proposed meeting on June 7 was to be crucial. In order to prevent it, the police swung into action and arrested the first five on June 6, using the Bhima Koregaon case and Damgude's First Investigation Report to frame them in a case of conspiracy and rioting.

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big capital and the state as a law-and-order problem, as a security issue. Under the guise of addressing the violence and rioting at Bhima Koregaon, the state criminalised the resistance movement in Maharashtra and managed to pull the curtain over the actual reason for these arrests: the ongoing class struggle in Gadchiroli. No wonder then that, beyond the histrionics of the arrests and theatrical

press conferences by the police top brass, when you get to the charge sheet (filed in November 2018, along with supplementary ones later), you find a surfeit of references to the struggle against mining and the resistance.

Second Round of Arrests

Five people (Varavara Rao, Gautam Navlakha, Sudha Bharadhwaj, Arun Ferreira, Gonsalves) were further arrested on August 28, 2018, across Delhi, Mumbai, and Hyderabad⁴⁷ Unlike the first round of arrests, there was something new in civil society's response this time. In a quick development, the next day, eminent intellectuals and members of civil society opposing the arrests petitioned the Supreme Court of India, filing a public interest litigation against the police.⁴⁸

⁴⁵ ↪ Rathod, "One Year of Bhima-Koregaon Case."

⁴⁶ ↪ Rathod, "One Year of Bhima-Koregaon Case."

⁴⁷ ↪ See The Leaflet, "Advocate Susan Abraham Talks to The Leaflet on #BhimaKoregaonArrests, UAPA and More," YouTube video, September 12, 2018.

⁴⁸ ↪ Public interest litigation is the provision for citizens to directly approach the higher courts in order seek redress for their rights and liberty, particularly against a heavy-handed state executive.

The court, however, dismissed this petition and refused to stop the arrests. The 2 to 1 ruling on September 28, 2018, rejected the appeal and allowed the police to go ahead with its “investigations.”⁴⁹

I want to highlight the manner in which the petitioners presented their case before the courts. They pointed out that the arrests were “clearly malafide and an attempt to silence dissenting voices and intimidate human rights activists in the country.” Their argument was that the police had violated the constitutionally guaranteed fundamental rights of the activists, namely, equality before the law (Article 14), free expression (Article 19), and personal liberty (Article 21). The petitioners therefore urged the court to institute an inquiry into the “malafide arrests”: “Issue an appropriate writ, order or direction, an independent and comprehensive enquiry into arrest of these human rights activists in June and August 2018 in connection with the Bhima Koregaon violence.”⁵⁰

Interestingly, soon after the arrests, as the matter was being contested in court, the Maharashtra police went to the media

The right to dissent versus authoritarian repression, democracy versus repression of democracy, freedom versus intolerance: such was the activist framing. For the police dissent, democracy and freedom are only a coverup for the “criminal offences to destabilise society,” an antinational conspiracy for “armed rebellion.”

seeking to provide “proof” that the activists were plotting to kill the prime minister. At the same time, the dissenting Supreme Court judge, Justice D. Y. Chandrachud, called for a special investigation team probe into the arrests. He argued that “circumstances have been drawn to our notice to cast a cloud on whether the Maharashtra police has in the present case acted as fair and impartial investigating agency. Sufficient material has been placed before the Court bearing

on the need to have an independent investigation.”⁵¹

Countering the petition in the Supreme Court, the Maharashtra police via Shivaji Panditrao Pawar (Swargate division, Pune City) filed a counter-affidavit. The police affidavit stated: “the accused persons are not merely political dissenters but involved in sinister design, planning, preparation and commission of criminal offences to destabilise the society.”⁵²

The activists were accused of “providing strategic inputs” to the Maoist “armed rebellion,” involving “mobilising and distributing money, facilitating selection and purchase of arms, deciding the rates of such arms and suggesting the routes and ways of smuggling such arms into India for its onward distribution amongst the cadres.”

What we have here is the emergence of two narratives, that of the police and that of the activists—well articulated, comprehensive, and in written form. In their mutual unity and opposition, they would produce the dominant discourse constituting the Bhima Koregaon conspiracy case.

The right to dissent versus authoritarian repression, democracy versus repression of democracy, freedom versus intolerance: such was the activist framing. For the police dissent, democracy and freedom are only a coverup for the “criminal offences to destabilise society,” an antinational conspiracy for “armed rebellion.” These diverging perspectives

⁴⁹ ↪ [“Activists Arrests — Judgement — 28-Sep-2018,”](#) *The Wire*, Scribd.

⁵⁰ ↪ Romila Thapar, Devaki Jain, Prabhat Patnaik, Satish Deshpande, and Maja Daruwala, [“Release the Wrongfully Arrested Activists: Full Text of Petition Filed by Romila Thapar And Others,”](#) Scroll.in, August 29, 2018.

⁵¹ ↪ [“Why Justice Chandrachud Thinks an SIT, Not Maha Police, Should Probe Bhima Koregaon Case,”](#) *The Wire*, September 28, 2018; [“Justice Chandrachud Dissenting Opinion,”](#) *The Wire*, Scribd.

⁵² ↪ See the Counter-affidavit: [“In the Supreme Court of India, Criminal Original Jurisdiction, Writ Petition \(Crl.\) Diary no. 32319/2018,”](#) Bar & Bench, September 2018.

produced the oppositional categories that would generate the terrain of contestation. This discourse would exclude precisely the facts presented above, principally the resistance struggle crucial to the entire case.

Hegemonic Discourse

In the public and legal discourses on the Bhima Koregaon case, the Gadchiroli resistance is largely absent, and when it is present bears no particular juridical significance. But if you look closely at the prosecution's charge sheet, filed in November 2018, you will again find that their charge of "conspiracy" does not always reach the scale of the alleged sensational plots to kill the prime minister. The prosecution's legal case is not completely or even primarily reliant on this fantastical "assassination plot" as media stories would have you believe.

Instead, the charge sheet is replete with concrete references to the struggle against mining. They refer to specific protests

he prosecution's charge of "conspiracy against the Indian state" depends to a large extent on their ability to criminalise the resistance by invoking the bogey of the "Maoist nexus."

and demonstrations that were held in Gadchiroli against the mining companies. For example, one pamphlet refers to the May 2016 campaign against displacement in places like Surjagarh, Damkodi, Agri-Maseli, and the May 4 and 5, 2016, call for a strike in Dandakaranya.⁵³ The prosecution's

charge of "conspiracy against the Indian state" depends to a large extent on their ability to criminalise the resistance by invoking the bogey of the "Maoist nexus."

On the one hand, this impels the police to refer to the resistance itself at the level of something non-discursive and seemingly factual, seeking to provide "evidence" for a "nexus," "networks," "armed rebellion," and "conspiracy." On the other hand, the narrative of civil society seems to be far freer of the need to mention incidents or events from the anti-mining struggle, as their case mostly depends on appealing to abstract "dignity," "liberty," and "rights." As soon as one posits an individual, such "rights" are taken to inevitably follow from principles of natural justice—hence references to the resistance on the ground to build a legal defence seem unnecessary and beside the point. In this approach, we can delineate something like a "necessary" reluctance to invoke the resistance as a juridical basis of the defence. The way to fight the prosecution's bogey of Maoism has, therefore, often come close to effectively denying the resistance altogether, or to reframe it by taking the life out of it. Such a fight for "justice," to use the words of Georg Lukács, "convert[s] justice into an autonomous, self-legitimising area, on the pattern of its epistemology or aesthetics."⁵⁴

Let us look more closely at Justice Chandrachud's note of 2018 Supreme Court dissent, after the second round of arrests. Chandrachud presented his case in terms of criminal investigation versus the individual's right against indiscriminate arrest, whereby Article 32 (individuals may seek redress for the violation of their fundamental rights) of the Constitution became important. He argued: "Conscious as the Court is of the public interest in the effective administration of criminal justice, it cannot be oblivious to the overriding constitutional concern to secure the dignity of the individual. The key to the balance between the two lies in a fair, independent and impartial investigation of crime."⁵⁵

Justice Chandrachud's demand as a dissenting judge was that a special team be set up to investigate the arrests by the police whose investigation was suspected to be "malafide"—that is, to "secure the dignity of the individual." The petition

⁵³ ↪ Sukanya Shantha, "[Bhima Koregaon: In 5,000-Page Chargesheet, Pune Police Say Activists Incited Violence](#)," *The Wire*, November 16, 2018.

⁵⁴ ↪ Georg Lukács, *The Destruction of Reason* (London: Merlin, 1980), 653–54.

⁵⁵ ↪ "Justice Chandrachud Dissenting Opinion."

by Romila Thapar to the Supreme Court was invoked on similar grounds. The basis of this approach by the defence is the belief that the safest bet is to focus on the state's violation of constitutionally guaranteed rights (equality, liberty, dignity).

Stan Swamy: Beyond the Norm

Is the legal and constitutional battle the best way to defend those arrested? In some cases, yes. But in practice, the success of the fight for legal equality, or a fair trial, is often itself dependent on another register of contestation.

Let us consider the utterances and poetic interjections of Stan Swamy soon after his arrest in 2020. Swamy refused to present himself as the subject of the law, or even as the subject framed in terms of seeking redress on the basis of constitutionally guaranteed rights and liberties. From his incarcerated positionality, within the confines of the state of exception and sovereign violence, Swamy yearned not to be re-inducted into the norm of democracy, the rights and liberties “normally” available to citizens in a democracy, but instead aimed to transcend both the norm and the exception of the sovereign “decision.”

To start with, Swamy broke with the penchant among activists to wallow in what Wendy Brown very poignantly called states of injury—where redress for an injury is sought in an overidentification with positive law and constitutional rights.⁵⁶ Swamy's poems and statements from prison defined a precise subjectivity—and it was not one of individual hurt, an aggrieved “citizen” facing repression or denied rights.

Neither the seriality of those caught up in the syndrome of states of injury nor the equivalence of the rights-bearing citizen fighting state authoritarianism were at work here, but instead a singularity, an unprescribed path. Swamy opened

Marx reveals that the fundamental condition of existence of the legal form is rooted in the very economic organisation of society.

up a new register, defining a new kind of political subjectivity, which in fact elevated the moral standing of the campaign for the release of the Bhima Koregaon sixteen, pushing it to a qualitatively higher plane. It did wonders for the legal defence team. Swamy was mourned by almost all sectors of society. Many eyebrows were raised when the High Court of Bombay, in a posthumous hearing, remarked that he was a “wonderful person” and that the court had “great respect” for his work.

And yet the possibilities opened up by Swamy did not catch on in all their uniqueness, even as praises were sung for the departed soul. Why? Do we not sense the workings of a hegemonic discourse that pushes back new horizons into the stultifying confines of the fetishised notion of law?

Marxism and Law

Beginning with Karl Marx himself, many have pointed to juridical relations as expressions of social relations under capitalism. In his 1924 seminal work, Evgeny Pashukanis highlighted this aspect of Marx and law. He wrote: “Marx reveals that the fundamental condition of existence of the legal form is rooted in the very economic organisation of society.... Any society which is constrained, by the level of development of its productive forces, to retain an equivalent relation between expenditure and compensation of labour, in a form which even remotely suggests the exchange of commodity values will be compelled to retain the legal form as well.” That is, any society, including supposedly socialist or classless ones, that retains the principle of so-called fair and equal distribution will necessarily produce fetishised

⁵⁶ ↪ Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995). See also her “Suffering the Paradoxes of Rights,” in *Left Legalism Left Critique* (Durham, NC: Duke University Press, 2002).

legal forms. For, after all, law is, by its very nature, merely what connects the identical and produces the “equal” or “equality.”⁵⁷

Since the equality enshrined in law is abstract, the functioning of this equality “spontaneously” generates inequality. Thus, it turns out that the exchange of equivalents leads to (paradoxically!) “a right of inequality, in its content, like every right.” That is, for Marx, even though the form is one of equality, the content of this law, as with any law, is the law of inequality. Pashukanis then adds: “Marx does not mention that there must be a state authority which guarantees the enforcement of these norms of ‘unequal’ right by its coercion, thus retaining its ‘bourgeois limit,’ but that goes without saying.”⁵⁸ Meaning, the coercive power of the state or the sovereign exception is a direct result of the “normal functioning” of legal equality.

From this perspective, it would be fanciful to imagine that the class struggle and the resistance in Gadchiroli are not themselves subject to the tyranny of fetishised legal forms. In a different mode, they too might be found to be internally replicating the capitalist logic of equivalence, remaining within the form of equality Marx is criticising.⁵⁹ Class struggle

Bhima Koregaon is, on one level, the name of the fetishistic powers of the law seeking to capture the class struggle, turning it into a legal battle.

cannot be a purist site supposedly outside all juridical relations—the two do not just interpenetrate; the struggle continues also within the space of the fetishistic powers of the law. Yet, there are strong currents within the resistance and class struggle that seek to presuppose and, in turn, produce a political subject not bound to the fetishistic powers of the law

and constitution. If social relations constantly and almost spontaneously take the form of juridical relations, then the class struggle must break with them, both on a formal level and more substantively.

Bhima Koregaon is, on one level, the name of the fetishistic powers of the law seeking to capture the class struggle, turning it into a legal battle. On another, more immediate, level, it is about how the state, through the use of the draconian UAPA, is refusing even the minimum fair and equal principle of the exchange of equivalents, violating equality of rights and liberties at the level of the law, not to talk about “structural inequality.” Repressive violence by the state always pushes the revolutionary movement into the legal terrain—and, worse, it accentuates preexisting liberal-capitalist tendencies within the revolutionary movement.

Today, the battle seems to be primarily about defending the rights of the Bhima Koregaon 16. The question thus remains: Does the register of the resistance, which is trying to pose its own “real state of exception” and not just return to the norm of democracy, strengthen the task of the legal defence against the prosecution? I believe it would be a step in the right direction to be able to pose this question successfully. As for answers, they can only come from ongoing practice and struggle.

Swamy painted before us the figure of a political subject not beholden to the conception of law. From prison, from within the belly of the beast, from within the space of the sovereign exception that is the UAPA, here was a subjective figure producing a concrete instance of a singular opening. It is as though the fetishistic powers of the law were turned

⁵⁷ ↩ Evgeny Pashukanis, *The General Theory of Law and Marxism: Towards a Critique of the Fundamental Juridical Concept* (1924; repr. New Brunswick: Transaction Publishers, 2003), 63–64. Emphasis added.

⁵⁸ ↩ Pashukanis, *The General Theory of Law and Marxism*, 62–63.

⁵⁹ ↩ On “the strategic insolvency of the Indian communist left in all its various strains and stripes,” see Pothik Ghosh, “Marx’s Critique of Political Economy and the Problem of Revolutionary Subjectivity,” *Radical Notes*, October 27, 2016.

against it, the power of the extrajudicial sovereign exception challenged by an autonomous singularity, alas still only on a purely formal level. Is this how one takes the first steps toward Benjamin's proletarian "real state of exception"?

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❖ **About this paper:** This paper was originally published in English by Monthly Review in April 2022.

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