

## Tribal Rights on Land: Policy, Practices and Perspective

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### Abstract

Chhattisgarh has 30.6 per cent the highest percentage of Schedule Tribe (ST) in its population. However, large scale alienations of tribes from land and forest are ongoing dreadfully. Instead of safeguarding their rights the state has mastered a violence fuelling technique of Salwa Judum to counter naxalism.

The Fifth and Sixth Schedule of the Indian constitution enable devolution of power to create autonomous structures safeguarding tribal traditions and practices. Importantly, guarantees protection of tribal land rights.

Over the years due to gross negligence and non-committal attitude of the state government towards solving issues in tribal areas, the contradiction between the tribal community and the state is translating itself into an open conflict in many areas.

The paper reviews the actual situation on ground and promises made by the Chhattisgarh government on **issues** of tribal land rights; and fifth schedule. To do so the paper juxtaposes various issues identified by the Chhattisgarh Tribal Advisory Council, *reported during 2005-2011; and the state response.*

**Keywords:** Fifth Schedule; Land; Tribal Right.

### Introduction

According to the 2011 Census, in central India Chhattisgarh has 30.6 per cent the highest percentage of Schedule Tribe people in its population followed by Jharkhand (26.2 per cent) and Orissa (22.8 per cent). In Chhattisgarh out of total 27 districts, 7 districts have tribal population more than 50 per cent in comparison to its total population and another 6 districts have 25 per cent to 50 per cent tribal population.

However, the tribal communities in state have faced rampant exploitation, displacement and

dispossession from their resources at the hands of the state. Large scale alienation of tribals from their land and forest is going on rampantly in Chhattisgarh. Whether for coal blocks in Raigarh, or a power plant in Premnagar, cement plants in Tilda, or a large industrial area in Rajnandgaon, bauxite mining in Sarguja and Jashpur, sponge iron in Raigarh and Raipur or diamond mining in Devbhog, tribals are facing and resisting displacement. Same is the story for the Tiger Reserve, Elephant Reserve, Wild life Sanctuaries etc. in Bilaspur, Jashpur and Dhamtari districts. The list is endless [1].

In general, over the years due to gross negligence and non-committal attitude of the state government towards solving issues in tribal areas, the contradiction between the tribal community and the State itself has become sharper, translating itself into open conflict in many areas. Almost all over the tribal areas, including North-east, Chhattisgarh, Jharkhand, Orissa and Maharashtra, Andhra Pradesh and Kerala, tribal people seem to feel a deep sense of exclusion and alienation, which has been manifesting itself in different forms. The Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration (October 2004) pointed out that the socio-economic infrastructure among the tribal people is inadequate, thereby contributing to their disempowerment, deprivation and resultant poverty, increasing malnutrition and forced migration [2].

The objective of the paper is to review the actual situation on ground and promises made by the Chhattisgarh state government on *issues* of tribal land rights; and fifth schedule of the constitution that deals with the administration and control of the scheduled areas. To do so the paper juxtaposes various issues identified by the Chhattisgarh Tribal Advisory Council (CGTAC), reported during 2005-2011; and the state response. To build the case, the paper is based on information available in public domain.

#### *Chhattisgarh and the Fifth Schedule [3]*

On 29th February, 2003 in exercise of the powers conferred by sub-paragraph (2) of paragraph 6 the Fifth Schedule to the Constitution of India, an Order was issued by the Governor of the state to notify the Scheduled Areas in the states of Chhattisgarh. In Chhattisgarh, PESA districts are Sarguja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, and Kanker District.

The Fifth Schedule and Sixth Schedule of the Indian constitution contain provisions for governance of tribal areas. These were designed to apply in areas with a large tribal population. These provisions enable devolution of power to the tribals and create autonomous structures that safeguard their traditions and practices. Perhaps most importantly, the constitution guarantees protection of their land rights. The Fifth Schedule applies in nine states, while the Sixth Schedule covers north-east part of India. However, these schedules only cover certain parts of

the states despite the fact that tribes are also found in other areas.

While laws and policies exist to ensure peace and good governance in tribal areas, institutions and forest departments breach many laws. Pristine territories with rich mineral resources overlapping indigenous settlements have seen marginalization of tribal voices, loss of autonomy and land. Having experienced displacement and broken promises over the years, a historical mistrust has characterized the relationship between the state and its indigenous communities. When land is required for developmental projects, the government has to follow due process, which amongst other things entails that people displaced should be adequately rehabilitated. But in most cases this has not been the case.

The tribals today have to also face all the time the ever-increasing threats from private interests. Improper mining, deforestation and land encroachment by voracious businesses and corrupt government officials not only jeopardize the environment, but also take away from tribals their way of life, the land. They have a symbiotic relationship with their land and forests. The forests provide means of livelihood to them, and their traditional practices in turn conserve these forests. With the government failing to protect their rights, tribals have resorted to fighting back and that is gaining ground for extremists in tribal areas. Faggan Singh Khulaste, Rajya Sabha MP from the Bhartiya Jannata party, works with indigenous communities in Chhattisgarh and Madhya Pradesh states where a number of districts are governed by the Fifth Schedule. He says, "Even though there is a degree of effort and initiative towards tribal governance, yet somehow what contradicts new paradigms and state policies is the lack of implementation" [4].

The Planning Commission of India, like many other committees and governing bodies, emphasizes on institutions of self-governance. A self-governing body such as the gram sabha is the only effective mechanism for efficient rural governance in tribal areas. According to a Planning Commission report, negligence and marginalization of tribal communities have been responsible for the emergence of left-wing extremism in 76 districts (32 PESA districts) of the country of which 13 districts are of Chhattisgarh. A year ago the Chhattisgarh state Government has also applied to the Central Government to include 4 (four) more newly created districts of the State, namely, Sukma, Kondagaon, Surajpur and Balrampur as extremist affected districts.

This provides lot of ground to seriously ponder why tribal welfare laws such as the PESA 1996, the

Forest Rights Act 2006 or even the Fifth Schedule of the Constitution have utterly failed to provide protection to the indigenous tribal communities of India. Why tribal laws such as The PESA, 1996 and The Forest Rights Act of 2006 remain subservient to other laws and find out concrete amendments to make them un-breakable in the Schedule V and VI areas.

#### *PESA Implementation [5]*

The adaptation of the Panchayat Acts has been pursued by the States in a routine way. The current review shows that hardly any relevant Acts of the Centre, or even the concerned States, have been amended to make them consonant with the relevant 'features' of governance in Scheduled Areas. Madhya Pradesh and Chhattisgarh are the only exception, which made a commendable beginning in this regard but left the same halfway through.

Vishnu Deo, a Lok Sabha MP from Raigarh District of Chhattisgarh and a part of the ruling Bharatiya Janata Party in an interview stated that "The Panchayati Raj does not function or make adequate decisions on governing roles, neither are powers devolved within state rural economies. The dilution of state policies by politicians lessen the chances for devolution rather than the involvement of local leaders. Neither does panchayati governance consist of tribal population or appropriate representation of the tribal perspective."

Many tribal voices are therefore demanding introduction of the Sixth Schedule in Chhattisgarh's Bastar district, which would give them a special status to participate directly in governance as in the North East States currently under the Sixth Schedule. Furthermore, the Sixth Schedule has certain features that can be implanted in any governance model for tribal areas, particularly concepts of constitutional and legislative subjects that are exclusive to local governments. An autonomous district council will give greater role in directing administrative requirements without depending on the Central State structure.

#### *Issues with PESA [6,7]*

- Ideally under the panchayati raj system, decision on industries, minor forest produce or infrastructural development projects should be based on gram sabha decisions. Unfortunately, the gram sabha has neither the authority nor the capacity to make decisions. Not all the states have given authority to Gram Sabha in this regard but Chhattisgarh is exception to that regard.

- However, the Zilla Parishad, the third tier of the panchayati raj system, is an independent body that proceeds on the basis of decisions taken at the gram sabha level. It comprises Members of Legislative Assembly (MLAs) and MPs who actually take decisions on behalf of gram sabhas. In most of reported cases of opposition to land acquisition in the gram sabha, fake approvals have been given. Evidently, these decisions are taken for political reasons and do not serve the interests of tribal communities. This has resulted in some of the biggest land scams which have taken place within tribal communities in Scheduled Areas.
- The Ministry of Tribal welfare and Ministry of Social Welfare regulate and decide on tribal grants. These grants go directly to the state, and it is the state government that makes sure that these grants are spent on tribal communities. The system needs to change, and funds for tribal welfare should not be clubbed with grants for other schemes. The tribal grants should only be used for the purpose they were allocated for.
- The Planning Commission needs to look into matters concerning state funds, as these get directed to a general fund pool. It is the lack of political will that has marginalized the tribal people further.
- Devolution will only come about if the system works well, but if the system does not have a meaningful application for its people, then the need is to look at on what grounds are decisions made in Scheduled Areas.
- There is a need for accountability regarding implementation of laws in tribal areas, and a strong political will is required in a scenario where there is reluctance to devolve authority to local bodies by the lawmakers. And in cases where there is some level of devolution of authority is given, it should be protected and promoted wholeheartedly.
- The Ramchandran Committee (Planning at the Grass root Level: March, 2006, New Delhi) about the duties of the Central Government to ensure that PESA should be effectively and correctively implemented in the Fifth Scheduled areas. PESA casts direct responsibility on the state legislature but being a central legislation and logical extension of the Fifth Schedule, a duty is cast on the Central Government to see that the provisions are strictly implemented.

- A critical issue in the implementation of PESA is to harmonize its provisions with those of the Central legislations concerned and also recast relevant policies and schemes of Central Ministries/Departments.
- According to available information, no integrative exercise has yet taken place to examine the relevance of different Central Laws to Schedule V Areas and to harmonize them with the aims and objectives of the PESA. The Land Acquisition Act, 1894, Mines and Minerals (Development and Regulation) Act, 1957, The Forest Act, 1927, The Forest Conservation Act, 1980, and The Indian Registration Act are among the laws which warrant particular attention in this context. Besides, The National Policy on Resettlement and rehabilitation of Project Affected Persons, 2007, National Water Policy, 2002, National Minerals Policy, 2008, and National Forest Policy, 2004 would require detailed examination from the viewpoint of ensuring compliance to the provisions of PESA.

#### **Supreme court notice to chhattisgarh on 5th schedule**

##### **Tribal Areas Administration**

In the seventies, a serious attempt to focus on the tribal population in the planning process was made in the form of a Tribal Sub Plan strategy. The process of bringing all tribal majority areas under the Fifth Schedule of the Constitution was also taken up. The 73rd and the 74th amendments to the Constitution of India, followed by the Provisions of Panchayats (Extension to Scheduled Areas) Act 1996 (popularly known as PESA), brought in a new model for self-government in the Fifth Schedule areas of the country.

Source: Development Challenges in Extremist Affected Areas — Report of an Expert Group, 2008

In July 2013, Supreme Court issued notice to Chhattisgarh government on a petition related to the Tribal Advisory Council (TAC) and Fifth Schedule of the Constitution that deals with administration and control of scheduled areas and scheduled tribes.

“This case is keenly watched by tribal rights activists across the country because it claims to provide the answer to the oft repeated question as to

why hasn't Fifth Schedule been applied in Scheduled areas so far,” says B K Manish (a tribal rights activist who had earlier filed a PIL on the Matter in CG High Court). The petitioner claimed that provincial governments had usurped governor's Tribes Advisory Council by installing chief minister as its chairperson and thus stifling all chances of a governor acting to remedy any state action to safeguard tribal interests as envisaged in Fifth Schedule. Chhattisgarh Tribes Advisory Council Rules, 2006 (similar to its counterpart in Orissa Bihar/Jharkhand) has been challenged on this ground in the said PIL [8].

##### *Chhattisgarh Tribe Advisory Council (CGTAC) [9,10]*

In Chhattisgarh the TAC was formed after constitution of the State in November, 2000. The last TAC was renamed in 2011 as Chhattisgarh Tribe Advisory Council (CGTAC). The Chief Minister is the Chairperson, the Minister of Scheduled Tribes and Schedule Caste Development Department (Vice Chairperson); 15 Scheduled Tribes MLAs (Members); three Members of Parliament (nominated as Members); and Secretary, Scheduled Tribes and Schedule Caste Development Department, Chhattisgarh government (Secretary). However, all these members belong to the leading political parties and rest serving the state government. As against many other states in CGTAC meetings most of the cases of tribal development are followed up rigorously. But progress in implementation is found lacking.

##### *Governor of Chhattisgarh Report to the president of India on TAC*

The Governor of every state having scheduled areas has to send a report of the TAC functioning, issues identified by TAC specific to the state's scheduled areas and action taken. For Chhattisgarh over the period from 2005 to 2011 the following issues besides others have found mention in report of the Governor: (a) Adverse effects of the Naxalite movement on the lives of the STs residing forest areas of the state; (b) Beginning of resistance to the Naxalite by the villagers in Bastar, Dantewada and Kanker district; (c) Adivasi families living in interior forest areas of these district have started moving in hundreds to places near to the main road to avoid atrocities of the Naxalites; (d) Thousand of Adivasi families have been displaced and there is urgent need for providing gainful employment to them.

## Excerpts of various CGTAC reports Specific to Tribal Land Rights

### A. Granting of land titles to STs

The meeting of the CGTAC held on 5 July 2005 discussed the issue of granting of land titles to STs who were in possession of forest land till 1980. The Forest Department informed that there were 65,000 families who were residing and were in possession of forest land till 1980. The CGTAC decided to request the Central Government for issuing formal approval to grant land titles to STs and to extend the cut-off year 1980 to 1993. In the CGTAC meeting held on 18 October 2006, the CGTAC was informed that no formal order had yet been received from the Central Government to issue land titles. Another recourse of filing a petition in the High Court for grant of land title was also thought for those who had been living in and possession of forest land since 1993. However, in the CGTAC meeting held on 19 November 2007, it was informed that granting of land titles to STs could be possible only after the Forest Rights Act came into force. In the CGTAC meeting dated 5 September 2008, it was informed by the Department of Tribal and Scheduled Castes Welfare that as on 31 August 2008 land titles were given to 41,000 persons. In the CGTAC meeting held on 28 July 2009, the Secretary, Department of Tribal and SC Welfare informed that as many as 1,28,467 land titles were granted and distributed under FRA.

### Contradiction [11]

In Rajnandgaon District only 5,791 forest land claims filed by STs have been settled so far. Another 10,994 forest land claims have been rejected. In Kanker district according to government records out of 27,646 filed claims on 17,831 cases 21,898 hectare land has been allotted. Whereas 9,815 cases were written off, the reason given by the forest department is that they were found inappropriate. In Kosmi village, Bastar district 300 claims under FRA were filed out of which only 65 cases were heard rest are still languishing. However in all these cases the forest department did not inform the claimants about rejection. Moreover in all the cases it found that land allotted is much less than for which the claims are filed or the prescribed limit. In all the districts the forest department is reluctant to entertain any claims under the purview of Forest Rights Act (FRA).

In Bastar district, village Paragaon 57 people have received letter of recognition of rights under FRA but the land recognized and allotted in these claims are

very minimal ranging only 25-30 percent of the actual claims. Moreover of 80 families claims have not been heard yet. The Forest Rights Committee formed under FRA is almost non operational. In village Chhura of 700 claims filed only 47 claims are only heard, for rest there no status update from the department. Even after state government's orders for not filing criminal cases against tribals regarding forest claims the department still does it.

In Mahsamand District for 2000 acres 640 families had filed claims for regularization under FRA out of that in 4 villages claims of 63 families over 77 acres of land has been accepted. In other 8 villages of 3 panchayats claims have not be heard even though Panchayat Secretary has forwarded them.

In District Bilaspur, Kotmi area only 56 tribal families have been settled on homestead land but 446 claims filed by tribals under FRA have yet to be resolved by the forest department. In district Korea claims under FRA of non-tribal forest dependent families residing and also cultivating the land from last three generations are not getting accepted. In the same district total 26,824 claims of forest land regularization have been filed out of which 20,181 claims have been rejected and rest 6,643 claims were settled by allotting 6,045 acres of land which is less than an acre per family.

In District Sarguja, total 90,882 claims of forest land regularisation were filed out of which only 26,584 claims were settled with 14,298.50 hectares of land. Rest of the claims was rejected but no intimation has been given to the settlers. Moreover, there are still thousand of claims could not filed due to lack of proper knowledge about FRA among tribals.

In Jashpur District, total 13,319 FRA claims were filed of which 3,554 claims were settled with 1769.67 hectares of land. Rest of the claims was rejected but no intimation to the settlers. In village Bhelava, Pataibahar, Kotli, Jamtoli hundreds of claims were filed by tribals families under FRA but 90 per cent are still unsettled with due to no response or rejection from the government.

In District Raigarh, village Durgapur, on 60 acres of land 20 tribal families were settled by Ekta Parishad in 2003 are yet waiting for their claims under FRA to be settled.

In Chhattisgarh state, till 2012, out of total 4,86,101 FRA claims only 2,14,633 are settled with 2,17,126 hectares of land. However, this isn't promising considering the share of tribal population in Chhattisgarh. Moreover, lack of implementation of PESA is disempowering when it comes to save land rights of the tribals. In majority of the settled claims

cases it is seen that the land allotment is scanty, difference between claims filed and settled are gross, to dissuade forest dependent families both tribals and non-tribals to file for legal entitlements under FRA no or improper information sharing by the departments, non-availability of claim forms in thousands of reported cases, non-issuing of caste certificates and overall total ignorance of the state towards recognition and settlement of community rights. The whole process of FRA on ground level implementation is disempowering to the tribals in reality against its spirit and purpose of recognizing historical injustice towards them and recognizing their rightful rights.

#### *B. Land Titles for Disputed land between Schedule Tribes and the Forest Department*

In 2007 TAC meeting, with regard to the tribal land owners who were allotted land in 1980 by the Revenue Department but whose land was claimed by the Forest Department, it was decided that a 3-member Committee consisting of the Secretaries of Forest Department, Revenue and Tribal and Scheduled Tribes Welfare department be constituted to survey the land in dispute and prepare an action plan for rectification of the land records. In next TAC meeting the Revenue Department informed that the land records were rectified following a joint instruction by the Secretaries of Revenue Department and Forest Department. The tribals who had been allotted the disputed plots were being granted titles under the Forest Rights Act.

#### *Contradiction [12]*

In Chanabharri, Kusumi Panchayat, Bastar District 100 tribal families have been cultivating on the acquired land from last twenty years. But none of the claims have been heard and settled under FRA. According to the villagers the local forest department and police are still antagonized against Tribals. In village Hardi 22 tribal families cultivating 80 acres of land since 1998 but under FRA only 10 families have their rights recognized. There isn't any intimation from the forest department about rejection of claims. In Bhuruku village of 22 families claims have not been accepted due to pressure from the forest department. Moreover, to stop them from cultivating their occupied land their sickles, axes and other traditional farm objects have been confiscated by the department.

In Daiharipara village, Block Belgahna of Bilaspur District 20 families had filed claims over forest land

acquired by them and under cultivation for the last 15 years now forest department is forcibly displacing them and started cultivating Jatropa. On villagers protest to this act of the forest department, the department went ahead and filed criminal cases against them. In District Korba, villages raniatari, kendai, amjhar, binjhra and lainga the similar incidences of forest department highhandedness has been reported. In most of the cases government is not keen on distributing forest land to the already settled tribals and applies force to push them, in other cases even if land is regularized it is meager and not enough for the families to cultivate and survive.

In District Jashpur, villages Patthalgaon, Jhimki, Khuntapani, claims of Pahadi Korwa tribes have not been accepted though filed under the procedure of FRA. Even in the village forest rights committee the tribe representation is marginalised.

Landless adivasis mainly of the Muria or Gothi Koya tribe of Chhattisgarh have long been crossing over into the forests of Khammam district of Andhra Pradesh in search of land, with the support of the naxalites. Again, both the forest and police departments came down heavily on them and set their hamlets on fire in incident after incident from 1989 till about 2002. But due to the interventions of civil society bodies the immigrants have stood their ground and today their presence is informally accepted by the administration.

#### *C. Alienation of tribal land to non-tribals*

In the CGTAC meeting, held on 28 July 2009 regarding alienation of Tribal lands through illegal sale and transfer to Non-Tribals, it was decided that cases of cheating and other forms of malpractices occurred in the illegal transfer/sale of lands of tribals to non-tribals and fraudulently obtaining approval of office of the District Collector in Scheduled Areas should inquired into and actions should be taken as per law.

This was followed up at the next meeting held on 9 November 2010 where MLA and CGTAC Member Sohan Potai informed about large scale illegal diversion of tribal lands in Dhamtari and Mahasamund districts and demanded an inquiry. At the CGTAC meeting held on 26 September 2011 with respect of taking actions in cases of large scale illegal diversion of tribal lands in Dhamtari and Mahasamund districts, it was informed by the Divisional Commissioner, Raipur that all districts in the Raipur Division had been surveyed. In Mahasamund district, 178 cases of illegal diversion

of tribal lands have been found and the same were being investigated.

Further, Chief Minister also confirmed having received complaints of large scale land purchases by outsiders in Raigarh, Janjgir and Korba districts and direction to the concerned District Collectors to take action against such persons. Further, in the CGTAC meeting held on 26 September 2011 the Revenue department informed that approval was found to have been given for sale of tribal lands to non-tribals in 1108 cases in Raipur Division and 254 cases in Bilaspur Division, 63 cases in Bastar Division while no approval was given in Sarguja Division. It was stated that approval given to sale of tribal land to non-tribals in Raipur and Bilaspur Division were non-Scheduled Areas whereas the Bastar Division was completely a Scheduled Area where tribal lands cannot be legally sold to non-tribals. Therefore, action for returning the land to the original tribal landowners was under process. It was decided that detailed report should be obtained in respect of approvals given in Raipur and Bilaspur Division while all cases of illegal transfer of tribal land to non-tribal should be repealed or abrogated.

In 2010 CGTAC meeting the member and MLA Subau Kashyap had informed about cases of non-tribals marrying tribal women and indulging in illegal purchase and sale of tribal lands in Bastar division. An enquiry was directed to be conducted into all cases of non-tribals marrying local tribal women and indulging in purchase and sale of lands in Scheduled Areas. With respect to questions as to the status of transfer of property that was acquired on inheritance by a non-tribal born out of a marriage between a non-tribal man and a tribal woman in the light of Section 165 (6) of the Land Revenue Regulations of 1959, state could not find an answer and decided to obtain legal opinion on the subject.

#### *D. Land Titles yet to be distributed in Abujhmad*

In the meeting of the CGTAC held on 5 July 2005, the previous decisions asking the State Revenue Department to survey the Abujhmadh area, to expedite the process of issuing land titles (patta) to the families who had previously settled and to complete the survey in 6 months, were reviewed. However, the CGTAC meetings held over the consecutive years in 2007, 2008, 2009, 2010 and 2011 did not see any progress related to the survey work which yet to be initiated. Though the central government grant of Rs.2.60 crore was received by the Chhattisgarh revenue department, the reason given by the revenue department for not completing

the task is inaccessibility of the region and lack of personnel having expertise in land records and cadastral surveying.

#### *Contradiction [13]*

Expert Group on Development Challenges in Extremist Affected Areas (2008) was appalled to be told that the Abujhmarh in Narainpur district of Chhattisgarh area has not been surveyed to date and that it has hardly any revenue or police presence on a regular basis. Abujhmad is one of such remote areas in the country where there is hardly any governance. Abujhmarh literally means 'Unknown Highlands'. The area has a tribal population of 27,000 inhabiting some 260 far-flung villages over a sprawling area of 4000 sq. kms. The tribals here are primarily the Maria; they are the most backward tribals between the rivers Ganga and Godavari. Abujhmarh has a difficult terrain which remains cut off from the rest of the civilized world for about six months a year. The Expert Group has no wonder that the Naxals have made it one of their strongholds. Even in areas which are not so much in the interior, the absence of adequate public intervention, especially in education, health and employment has allowed the non-state actors to push their agenda among the people.

#### *E. PTGs and Land Titles [14]*

As per 2002 base line survey, the 5 PTGs tribes - Kamar, Bega, Bihror, Hill Korba and Abujhmadia tribes were recorded residing in 11 districts of Chhattisgarh and the number of families were 24,770 while according to the base line survey of 2005-06 (excluding Abujhmadia tribe) the number of PTG families is 34,203. At CGTAC meeting held on 26 September 2011, Minister for Panchayat and Rural Development proposed to make special provisions for development of PTGs in Sarguja district from the State budget.

#### *Contradiction [15]*

In District Kabeerdham, Block Bodla, also known as "Baiga Chak", almost 6,500 people belonging to Baiga PTG tribe living in the area. Even after FRA implemented in the state Forest department continue to encroach for plantation in Baiga occupied lands. Moreover, the area is also gripped under threat of non- adivasi outsiders occupying large tracts of lands under Baiga Chak. In Sajatola village out of 32 forest land claims filed by Baiga families only 18 claims were settled. In village Navatola, from the last 22 years around 40 Baiga families have occupied and cultivating 100 acres of land but even though claims

for regularization and rights settlement have been filed under FRA no action has been taken by the forest department. In village Bijapani, 10 Baiga families cultivating 35 acres of land since last one decade, but instead of their rights recognition the forest department has filed criminal cases against them. In total 1,445 Baiga families had filed claims under FRA only 502 claims were settled and rest 943 claims still pending. The land allotted in settled cases are scanty than the claims filed. Moreover homestead titles are not allotted which will certainly in future create trouble for these PTGs.

In Block Pandariya, FRA claim forms have not made available in sufficient number due to which around 3,000 Baiga families failed file their claims. The state government had promised to take back the cases filed against Baiga families related to forest land encroachment but no such action has been initiated on ground. In village Pathratola, 22 Baiga families had filed claims over 50 acres of land under cultivation but claims were not settled. They planned to file second appeal. In village Singhari Dhauratola, 21 families cultivating swamp area under acquisition since 2003 but their FRA claims have not been heard yet. In Bheera village Panchayat, 14 Baiga families had filed claims which were not settled but encroachment cases were filed against them by the forest department. In 2003, with the help of Ekta Parishad 6,100 Baiga families were promised to be settled by the state Government but even after so many years no such action has been initiated by the state.

Since 2003, nine villages, comprising 220 Baiga households, displaced from Bhoramdeo Sanctuary in Kabirdham district. No official records exist. Similarly, since 2009, six villages, comprising 245 Baiga families, displaced from the Achanakmar Tiger Reserve. Nineteen more villages are to be displaced. Earlier since 1970 to 2010 almost 28 villages have been displaced for Kanha National Park now in Madhya Pradesh. (Baiga in Exile: Sayantan Bera, Down To Earth, 15-31 July 2012).

Similar is the case with regard to Dhanuwar, Bilaspur District, whose claims of land settlement are yet to be decided by the forest department. The Pando tribe couldn't file nominations under FRA due to their illiteracy.

In District Raigarh, Block Dharamjaigarh, Nomadic Tribe Pardhi community's 220 families from village Tejpur, Baggudenga, Pathrapara, Heerapur, Beldegi and Lipti have been cultivating land under possession since last three generations but their claims under FRA have not been settled. This is

ironical to find that even PTGs, NTs and DNTs claims under FRA are not heard and settled rather rejected and they are subjected to legal action.

#### *F. Rehabilitation of Naxal conflict affected displaced persons*

In the CGTAC meeting held on 18 October 2006, the plight of the Internally Displaced People's (IDPs) displaced due to the Naxal conflict was discussed. The Home Department and Revenue Department confirmed that about 40,000 persons were living in the relief camps and 6,000 persons were given permanent land titles and an Action Plan had been developed for resettlement of the IDPs who had been living near the highway. The Chief Minister instructed that the government land near the highway should be reserved for distribution to the displaced people.

As the instruction remained unimplemented, the Chief Minister once again instructed in the CGTAC meeting held in November 2007 that information in this regard should be collected from the concerned district collectors and immediate action should be taken in this regard. In the CGTAC meeting held on 5 September 2008, the Revenue Department informed that 2.50 acre land at Bamhi village; 3.00 acres at Bade Dongor village and some government land at Dhanora village under Koragaon Sub-Division in Bastar district had been reserved for distribution. 89 displaced families had been allotted 900 square feet each at Devgaon village and Halamimujmeta in Narayanpur district and land titles were issued to them. In Dantewada district in 18 villages, area of 3822.804 hectare was declared as residential area where 7177 Naxalite affected families had been resettled. In Kanker district the department selected an area of 64 acres private land near the main road for resettlement of the displaced families. Rs 53.20 lakh was required to acquire the said land. In the CGTAC meeting held on 9 November 2010, the Secretary, Revenue Department informed that 8,000 Sq km was eligible for de-notification. In the CGTAC meeting held on 26 September 2011, the Forest department informed that it would complete the process of de-notification within 3 months.

#### *Contradiction [16]*

In many places the local inhabitants formed resistance groups when the Naxalites severely interfered with their traditional life style. However, these resistance groups were converted into vigilante groups sponsored by the state authorities over a



period of time. In Chhattisgarh, the group is called Salwa Judum. Some members of this group are appointed as Special Police Officers (SPOs). Some of them are given arms training and are provided with fire arms. Often these vigilante groups fight with armed naxalite groups making the tribals fight the tribal. As a principle of good governance such a situation is not desirable. These vigilante groups, once inhabitants of tribal villages, but have moved out are put in camps along with some arterial roads. Such migrants have left behind their agricultural land, their livestock and other means of production and livelihood. Most of them do not like their camp life which has discipline and constraints. Moreover, through this process of forced migration, many tribals have left their villages and even the State and migrated into neighboring States. This involuntary displacement and migration has caused further distress among the tribals and created administrative problems for the host State.

Considering the widespread phenomenon of internal displacement and in the absence of any policy in this regard, the migrant tribals are prey to all manner of exploitation. The Muria (Gothi Koya) immigrants from Chhattisgarh have, in their desperation, been a source of extremely cheap labor in building construction and civil works of all kinds in the parts of A.P that they have migrated to.

It is a well acknowledged fact that Naxalites have secured increases in the rate of payment for the picking of 'Tendu' leaf which is used for rolling beedies, in the forest areas of Andhra Pradesh, Chhattisgarh, Orissa, Maharashtra, and Jharkhand. This was once a major source of exploitation of adivasi labor, and while the Government knowingly ignored it, the Naxalites put an effective end to it. The exploitation was so severe that the rates have over the years increased up to fifty times what the 'Tendu patta' contractors used to pay before the Naxalites stepped in. It is therefore necessary for the State to provide for Minimum Support Price (MSP) for all types of minor minerals and forest produce and institutionally efficient procurement systems.

As a widespread vicious practice, wherever there is a basis for discretion on the part of government officials, forest personnel have had to be appeased by the tribals in different ways to avoid harassment. It was only after the Naxalites entered the picture that the adivasis got protection from this harassment, which was well known to the administration but was normally ignored. However, after the initial impact on extortionate practices of the forest department officials, the Naxalite movement's impact on official corruption has been slight.

On some occasions the Naxalites have been able to put pressure upon lower level administrators to perform their job effectively. The pressure exerted by the Naxalite movement has had some effect in ensuring proper attendance of teachers, doctors etc., in Andhra Pradesh, Maharashtra and Chhattisgarh, but it is also true that such employees have made the presence of the Naxalites an excuse for not attending to their duties properly in the interior areas. To counter State, over the years, Naxalites have also used opportunities as in Chhattisgarh by demolishing pucca buildings such as schools so that the police and paramilitary may have no shelter in the forests.

#### *G. Salwa Judum and 5th Schedule [17, 18, 19]*

The Salwa Judum campaign was started in June 2005 by the ruling Bharatiya Janata Party (BJP) government in Chhattisgarh to eliminate the ultra-left guerrillas, variously referred to as Naxalites or Maoists. In forest- and mineral-rich Dantewada district of Chhattisgarh, at least 300,000 tribals have been displaced in the face-off between the Maoists and the state-sponsored Salwa Judum. The villages have been "evacuated" and some 50,000 refugees moved to government camps. The rest have migrated to neighboring states. Around 40 per cent of the children evacuated by the Salwa Judum to camps in Chhattisgarh are not in school. Government camps where the herded tribals are literally starving, with no healthcare, no sanitation and almost no way to earn a livelihood. As many as 3,800 civilians in Dantewada and Bijapur districts both tribals and non-tribals have joined the Salwa Judum as special police officers. Most of them are young men, but there are plenty of (not-on record) children too.

The Chhattisgarh government has to date inducted thousands of villagers as auxiliaries into this campaign by invoking the fear of the Maoists, the chief minister going to the extent of announcing: "Those who are not with the Salwa Judum are with the Maoists." And so began the business of evacuating entire villages in the deep jungles of this central Indian state located right in the middle of the country's mineral-rich tribal belt. The government believed these villages were sustaining the Maoists. If they were vacated, how would the Maoists get food, water and shelter? And for whom would they run parallel governments?

The Maoists hold sway over considerable areas in the country, from Andhra Pradesh in the south to the Nepalese border in the north. India's intelligence agency, the Research and Analysis Wing (RAW), estimates that some 20,000 insurgents are currently

in operation across the country. Their growing influence prompted former Prime Minister Manmohan Singh in 2006 to declare them the "single biggest internal security challenge ever faced" by India.

Dantewada is virtually in the heart of Maoist territory, bounded on the east by Malkangiri district of Orissa state, on the south and southwest by Khammam district of Andhra Pradesh state, and on the west by the Indravati River, which forms the boundary with Karimnagar district of Andhra Pradesh and Gadchiroli district of Maharashtra. The district is blessed with the Bailadila range of hills that are full of saal and teak forests and also hold some of the country's richest reserves of iron ore, coal, limestone and bauxite. Here live some of India's most impoverished people: some 7.19 lakh predominantly semi-literate tribes who exist in near-destitution across 1,354 villages spread over a total area of 9,046.29 sq km.

If government figures are to be believed then some 644 villages have been burnt and evacuated by the Salwa Judum. The Dantewada district collector's memorandum of 2007 states that since June 2005 around 139 Salwa Judum rallies and 47 Salwa Judum meetings were held and 644 villages from Dantewada district "joined" Salwa Judum.

A report by the Campaign for Peace and Justice in Chhattisgarh, a group of individuals and organizations concerned over the state-sponsored violence, says that exact figures are not known, but estimates that at least 100,000 people have been displaced and the lives of at least 300,000 people from the 644 "liberated villages" have been completely disrupted because of the Salwa Judum.

The Chhattisgarh government created salwa judum to do the kind of barbaric crimes that the official forces do not want to be seen doing. This included the burning and emptying villages, the driving people to leave their homes in a "scorched earth" policy; killing and gang-raping on a mass scale, physical, social and political exploitation to the height of anybody's imagination.

In 2011, the Supreme Court, in a historic judgment on a PIL, declared anti-constitutional State government supported and formed a militia called Salwa Judum. It disallowed the use of Special Police Officers in the "counterinsurgency" campaign against the CPI (Maoist).

This case represents a yawning gap between the promise of principled exercise of power in a constitutional democracy, and the reality of the situation in Chhattisgarh, where the State of Chhattisgarh, claims that it has a constitutional

sanction to perpetrate, indefinitely, a regime of gross violation of human rights. The State of Chhattisgarh also claims that it has the powers to arm, with guns, thousands of mostly illiterate or barely literate young men of the tribal tracts, who appointed as temporary police officers, with little or no training, and even lesser clarity about the chain of command to fight the battles against alleged Maoist extremists. State led initiatives like Salwa Judum have only resulted in excessive landlessness, extreme poverty and severe malnourishment, demeaning of women, torture and large scale internal (forced) displacement. The worst is that a tribal is pitted against another tribal in Salwa Judum. This has far reaching consequence in breaking down a community based societies of tribals.

The above discussion indicates that the reason behind extremism in tribal areas is indeed due to non-recognition of tribal rights over land and land based natural resources. And forceful exploitation of these resources and arbitrary state response towards demands of tribal rights and autonomy. It is suggested that there is urgency to find solutions of bottlenecks in practice of the Scheduled Areas autonomy specified under the constitutional framework. Dilution of state policies (governing tribal areas) by politicians rather than the involvement of local representatives only lessen the chances for devolution of powers. It also alienates tribal perspective by not giving appropriate representation in panchayat governance and hence curtailing their opportunities of freeing from landlessness, extremes of poverty, social oppression and institutional suppression. Devolution of powers to Panchayats in Scheduled Areas and freeing bodies like TAC from the clutches of political influences and bureaucracy will help in rationale of PESA and upholding the long pending rights of tribal over their land, livelihood and life. This is to bring real development to the tribals and tribal areas, to see tribal developing at par with the development of other communities.

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