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PROTECTION OF TRIBAL LIVELIHOODS & CULTURAL EXPRESSIONS

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1 INTRODUCTION

Tribals are at the bottom of social and political ladder in India. Development projects have not only bypassed them, but have often harmed them by taking away their lands and other resources on which their livelihood was based. Unless the processes which result in their proletarianization are identified and corrective action taken to prevent it, chances are that new programmes will continue to ignore their culture and livelihoods as in the past. This paper analyses the currently existing central legislations and programmes for them, and the need for further changes in policies and governance which will enable the socially excluded *Adivasis* to protect their cultural traditions and reclaim their rights and entitlements in the context of land, forests and water.

The ST population was 104.3 million in 2011 and accounted for 8.6% of the total population of the country. Only 10 percent of them live in urban areas.¹ They are scattered over all the States / UTs, except Punjab, Haryana, Delhi, UP, Bihar and the UTs of Pondicherry and Chandigarh. Seventy five districts in India have a tribal population of 50 per cent or more. While forty-one of these districts are in the North Eastern region, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh and Odisha also have three or more districts with tribal populations of more than 50 per cent.

According to Article 342 of the Constitution, the President of India may after consultation with the Governor notify specific communities to be Scheduled Tribes (STs) in relation to that state. For a community to be identified as ST, it should fulfil the following criteria: primitive traits, distinctive culture, shyness of contact with the public at large, geographical isolation, and backwardness - social and economic.²

The Constitution of India contains several provisions for ensuring a better quality of life for them, based on a policy of positive discrimination and affirmative action on the developmental and regulatory fronts. These include Articles 244, 244A, 275(1), 342, 338(A) and 339. Article 46 makes it incumbent upon the State to promote with special care the educational and economic interests of the weaker sections, particularly the SCs and STs and to ensure that they are protected from social injustice and all forms of exploitation.

The Fifth Schedule of the Constitution provides for administration and control of Scheduled Areas and Scheduled Tribes and gives powers to the Governors to make regulations for the peace and good governance of the Scheduled Areas. Similarly, the Sixth Schedule also contains specific provisions for the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Deriving force from these enabling provisions in the Constitution aimed at ensuring social, economic, and political equity, several specific legislations have further been enacted by the Central

¹ GoI (2013): Statistical Profile Of Scheduled Tribes In India 2013, Ministry of Tribal Affairs Statistics Division, Government of India, New Delhi, p.1

² GoI (2007): Annual Report Ministry of Tribal Affairs, Government of India, New Delhi

and the State Governments for the welfare and protection of STs and their tribal domain.

Not all *adivasis* are given ST status. Some groups are identified as STs in one state but not in another and it is not always clear why that is the case. Some very deprived groups like the *adivasis* of Assam, who were brought in as indentured labour from Bihar and Odisha by the British as tea plantation labour, do not have ST status. In several parts of the North-east, particularly in Assam, those *adivasis* who do not have ST status are in direct conflict with those tribals who do because there is a belief that *adivasis* are being deliberately denied ST status for political reasons.

Adivasis in central India have traditionally lived in mainly forests, hills, in undulating and inaccessible terrain in plateau areas, and at the tri-junction of state boundaries, which are remote from state capitals. They have lived as isolated entities for centuries, largely untouched by the society around them. This seclusion coupled with political disempowerment and bureaucratic indifference has been responsible for the slower growth, and dissimilar pattern of their socio-economic and cultural development.

2 TRIBAL NEGLECT

Adivasis are India's poorest and the most marginalised communities. As brilliantly analyzed in the Approach Paper to the X Plan, from the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population; often their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation³.

Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical — as tribal institutions and practices were forced into uneasy existence with or gave way to market or formal state institutions (most significantly, in the legal sphere), *Adivasis* found themselves at a profound disadvantage with respect to the influx of better-equipped outsiders into tribal areas. The repercussions for the already fragile socio-economic livelihood base of the tribals were devastating — ranging from loss of livelihoods, land alienation on a vast scale, to hereditary bondage⁴.

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, the small clutch of bureaucratic programmes have done little to assist the precipitous pauperisation, exploitation and disintegration of tribal communities. Tribal people respond occasionally with anger and violence, but often also in anomie

³ <http://planningcommission.nic.in/hindi/reports/articles/ncsxna/ncsax1b.htm>

⁴ <http://inclusion.skoch.in/story/216/what-needs-to-be-done-for-marginalised-and-disadvantaged-people-516.html>

and despair. However that too is branded as a typical 'law and order' problem, ignoring its socio-economic dimensions.

Thus it is the forced assimilation caused by government policies and lack of protection to the simple *adivasi* culture against the tyranny of distorted market forces that has been their main problem. Without adequate safeguards, such an interaction is going to be on unfair terms and likely to cause more harm rather than any good to them.

2.1 SCs vs STs⁵

One of the main factors behind the success of mandatory reservation in India has been excellent leadership provided by the SC community, which has unfortunately not been the case for the Scheduled Tribes. Whereas the scheduled castes can boast of having produced leaders and administrators such as B R Ambedkar and Jagjivan Ram in the past and K R Narayanan, Buta Singh, Paswan, Kanshi Ram and Mayawati in more recent times, it is hard to find any of national stature from the scheduled tribe category.

At the village level too, the level of awareness and enthusiasm amongst the SC parents to educate their children is quite high. In terms of overall literacy, the scheduled castes have fared better than the scheduled tribes. As per the 2011 Census they enjoyed literacy rate of 66 per cent as against 59 per cent for tribes. Again the geographical mobility of the scheduled tribes, especially the educated, is not as pronounced as that of the scheduled castes both within and outside of the states.

Why is the success rate higher for the SCs when compared with STs? Though ostracized, the scheduled castes or the erstwhile untouchables had been integral to the dominant community whether in a village or town, the only difference being that the untouchables were unjustly segregated from the community and subjected to all forms of disabilities and discrimination. The scheduled castes have, therefore, had a greater exposure to the larger society as compared to the scheduled tribes, who lived an isolated life totally oblivious of the mainstream developments. This is to say that opportunities made available to the larger societies or the higher castes in the form of knowledge, information, technology, employment, etc, were also in sight for the scheduled castes, even though they were denied access to it. Once the element of discrimination was legally removed and affirmative policies introduced, the SCs took full advantage of the new opportunities. Such an environment was absent for the scheduled tribes. Tribes thus suffered the disadvantage of isolation in this regard. The other difference is due to language; whereas the SCs spoke the same language as the dominant group, the STs often speak a different dialect or even language, and their children have the handicap of being taught at schools in a language which they do not understand well resulting in higher dropout rates. This turns out to be one of the most serious handicaps before the tribes.

⁵ This section is based on Xaxa (2001).

3 INDICATORS OF BACKWARDNESS

Ex-Prime Minister Sri Manmohan Singh during the Chief Ministers' Conference on implementation of the Forest Rights Act on November 4, 2009 admitted, 'There has been a systemic failure in giving the tribals a stake in the modern economic processes that inexorably intrude into their living spaces. The alienation built over decades is now taking a dangerous turn in some parts of our country'.

Similar picture is presented in the XI Plan document (para 6.64):

'Despite some protective measures and developmental efforts, the emerging tribal scenario characteristically continues to manifest:

- increasing tribal alienation on account of slipping economic resources like land, forest, common property resources;
- displacement and dispossession of life-support systems;
- general apathy of official machinery;
- escalating atrocities, at times related to assertion of rights;
- growing clout of market forces; and,
- meagre advancement through planned development efforts.'

This frank admission of the present sorry state of affairs was unfortunately not followed up by concrete suggestions how corrective action can be initiated, and by developing a system of oversight that would enable the planners to measure the extent to which progress is satisfactory. The net result is that tribals in central India have made little advancement as compared to other social groups. We discuss below their current situation on some key indicators.

3.1 Poverty

The central region of India, despite being resource rich in terms of minerals and forests, inhabits the poorest people who have not benefited from social and economic development to the same extent as others. Persistent problems faced by *Adivasis*—land alienation, indebtedness, vanishing minor forest products from government forests, and displacement from their ancestral lands are some of the causes for their impoverishment. In addition, *Adivasis* have suffered because of the poor quality of governance, as government servants are reluctant to work in remote tribal areas and are often absent from their official duties. Poor implementation of existing schemes in the tribal regions has meant that not only poverty continues at exceptionally high levels for *Adivasis*, but the decline in poverty has been much slower for them than for other social groups, as shown in Table 1.

Table 1: % of people below poverty line and its rate of decline

Category	1993-94	2011-12	Rate of annual decline
Scheduled Tribe (ST)	62.6	43	1.7
Scheduled Caste (SC)	60.1	29.4	2.8
Other Backward Class (OBC)	39	20.7	2.6
Others (General)	39	12.5	3
All	45.1	21.9	2.9

Thus the gap has been steadily rising, with the result that between 1993-94 and 2011-12 the share of the tribals amongst the poor in the country increased from 14.8 to 19.5 per cent. Lagging of scheduled tribes reflects the fact that geographical seclusion has limited their access to new self-employment opportunities, and as labour supply has remained abundant in the remote villages with negligible out-migration, agricultural wages for this group did not grow to the same extent that they did for the scheduled castes, which live comparatively in fertile regions.

While the STs living in Himachal Pradesh, Mizoram, Ladakh, and the southern states are not so poor, Maharashtra and Orissa exhibited rural ST poverty rates exceeding 60 percent in 2011-12, while Chhattisgarh, Jharkhand, Madhya Pradesh and West Bengal had poverty rates for STs exceeding 50 percent. According to the 2011 Census about half of the ST households in many central Indian districts possessed neither a mobile phone nor a bicycle nor radio. Only one-third STs and around half of SCs reside in *pucca* houses, compared to 66 per cent for the whole population. Over time, ST households, due to a slower pace in improvement, have experienced a growing divergence from the national average of households residing in *pucca* houses.

3.2 Literacy

Similar gaps continue between literacy levels and health indicators of STs and the general population. The continuing gap between literacy levels of STs and the general population is shown below.

Table 2: Literacy Rates of STs and Total Population (in per cent)

Category	1971	1981	1991	2001	2011
Total Population	29	36	52	65	73
Scheduled Tribes	11	16	30	47	59
Gap	18	20	22	18	14

Table 3: Female Literacy Rates of STs and Total Population (in per cent)

Category	1971	1981	1991	2001	2011
All	19	30	39	54	65
STs	5	8	18	35	49
Gap	14	22	21	19	16

Thus the gap in literacy levels, both for tribal men and women, has not declined significantly despite the fact that the largest proportion of centrally sponsored programmes for tribal development are related to the single sector of education. The gap would be wider if the north-eastern states are excluded from the above table, as education and health standards of tribals in that region are much above the national average. There are districts⁶ in India where the female literacy among adivasis is less than 10 per cent!

The dropout rate is a critical indicator reflecting lack of educational development and inability of a given social group to complete a specific level of education. The dropout rate among indigenous and tribal peoples is alarming. Various steps taken by the State governments to check drop out including free distribution of books and stationery, scholarship, reimbursement of examination fee, free bus travel etc did not have the desired success. The delay in disbursement of scholarships is one of the reasons for increasing drop out of indigenous and tribal students.

An evaluation⁷ carried out by the Ministry on the Ashram scheme reveals that the performance of certain States in providing matching grant, and maintenance of services and management of hostels is not encouraging. The pace of construction of hostels has been very slow and the basic amenities provided therein are of substandard. Some of the schools are very badly maintained and deprived of even basic facilities. Also, no separate sections exist in the hostels for primary school children, which is a pre-requisite. Such evaluations should be more frequently done by the Ministry so as to understand the shortcomings and suggest corrective measures.

Box 1: Seeking Education: One Person's Journey

Dhanaji Khupkar belongs to the pastoral, nomadic, Dhangar tribe. He has completed his master's degree in Social Work and works with a NGO in Gujarat. He says that the itinerant ways of his tribe precludes a school education for most youngsters of the Dhangar tribe as school education demands regular attendance in a fixed place. He attributes his own education to the fact that he was a 'sickly child' who had to be left behind when his family went on their 'wanderings' with their animals, as is their wont. He stayed with his grandparents in Satara, and studied. 'I'm finding it difficult to find an educated girl in my community to get married to,' he smiled, ruefully.

Khupkar drew our attention to the fact that tribal people, whether they were settled cultivators or nomadic pastoralists, suffered from various kinds of disadvantages. For instance, while the nomadic lifestyle, as in the case of his own tribe, made school education difficult, it helped the tribes people become conversant with the mainstream/ regional language – Marathi in this case: 'The earlier generations could

⁶ It was only 8.4% in Koraput in 2001.

⁷ <http://planningcommission.nic.in/plans/mta/midterm/english-pdf/chapter-03.pdf>

also speak Hindi as the language was widespread in the Bombay province. The new generation speaks only Marathi, besides our own tribal language,' he said.

The settled cultivators among the tribes, unlike the nomadic tribes, could attend school, if there was one that was accessible. But they soon drop out of school because of their lack of knowledge of languages other than their own tribal language. Their cloistered existence, unlike that of their nomadic counterparts, also makes it difficult for them to adapt to the ways of mainstream society, said Khupkar.

Veerbhadranaika et al. 2011

The 16th Joint Review Mission of the SSA done in 2012 notes with some concern that enrolment for SC and ST and Muslim children in the 6-14 population has reduced. Among the social categories, the enrolment rate is lowest among the scheduled tribes. As per DISE data, the enrolment of SC children has reduced from 19.81% in 2009 to 19.06 in 2010-11. Similarly enrolment for ST children for the same period has reduced from 10.93% to 10.70%. Reports of Monitoring Institutes also observed that there were noticeable gaps in learning achievement levels of SC, ST and Muslim children in almost all the states.

Most teachers teaching in *adivasi* schools are non-*adivasis* who tend to view *Adivasi* language, culture and social practices as being inferior to theirs. Psychologically, this has a strong negative impact on children, which again contributes to their dropping out of school. One way of tackling this problem would be to change the way *adivasi* communities are being educated. For instance, if textbooks were to be prepared in the language of the *adivasis* to express their culture, worldview and concepts, it would make it easier for *adivasi* children to begin learning since they would be already familiar with the language and content of the textbooks. It would also mean that they would have to learn only two skills, viz., reading and writing. In time, they could gradually begin to learn the language of the state, which would put them on par with non-*adivasi* students.

There exists a need to work out special plans for education in *Adivasi* regions. Quality and relevant education should form essential components of the plans. Other policy-related measures that can be considered are the following (Veerbhadranaika et al. 2011):

- A special cell for tribal education needs to be established at the MHRD catering only to the needs and requirements of education among *Adivasis*. Nominated members from the larger society (those who have a deep engagement with *Adivasi* issues) can act as catalysts and advisors to the cell.
- Steps to bridge the huge information gap that exists about various schemes of the ministries need to be made.
- Expansion of certification to include crafts, arts and other skills.
- Address hurdles in obtaining caste/tribal-certificates.
- Review Tribal Resource Centres and Tribal Research Institutes and reinvigorate them or assign new tasks and responsibilities with in-built accountability.
- Decentralise curricula, teacher education, and teacher recruitment.

3.3 Health

The health status of STs are far worse than that of other sections of society. Since access to care is limited for STs, barely 42% of pregnant STs could access a doctor for ante natal care and only 28% could access an ANM, whereas 64% of others obtained ante-natal care from a doctor. Again, since most STs live in remote rural areas, barely 18% of all STs had deliveries in a health facility, compared to 51% among other communities. There is, however, a failure of governance, which has multiple dimensions and is not confined to the inefficiency of the health delivery system only.

Table 4: Mortality and Under nutrition

Indicator	SC	ST	Others
Child Mortality (per 1,000 live births)	83	84	62
Infant Mortality	39	46	22
% of Children with Anaemia	78	79	72
% of severely Underweight Children	21	26	14

(Planning Commission 2008)

A World Bank study (Das 2010) showed that a disproportionately high number of child deaths are concentrated among Adivasis, especially in the 1–4 age-group and in those states and districts where there is a high concentration of Adivasis. These children make up about 12 percent of all children under 5 years, but account for 23 percent of all deaths in the 1–4 age-group in rural areas.

Table 5: Child Mortality among Adivasis vs their Share in the Rural Population

Social group	% of all children under 5	% of child deaths
SC	21.6	28.1
ST	11.7	23.0
OBC	41.8	35.5
Other	24.9	13.4
Total	100	100

(Source: Das 2011)

Any effort to reduce child mortality in the aggregate will have to focus more squarely on lowering mortality among the Adivasis. All-India data indicate that tribal babies are *not more likely to get sick* from diarrhoea or respiratory disease, but are *much less likely to get treated* than other children. Since most of the tribal habitations are located in isolated villages and hamlets in undulating plateau lands coinciding with forest areas, they have limited access to critical infrastructure facilities such as roads, communication, health, education, electricity, drinking water, and so on. Even in a developed state like Karnataka there is shortfall of 822 SCs, 107 PHCs and 35 CHCs

in the tribal areas (CRM 2018). This widens the gap between the quality of life for tribals with other people in the country.

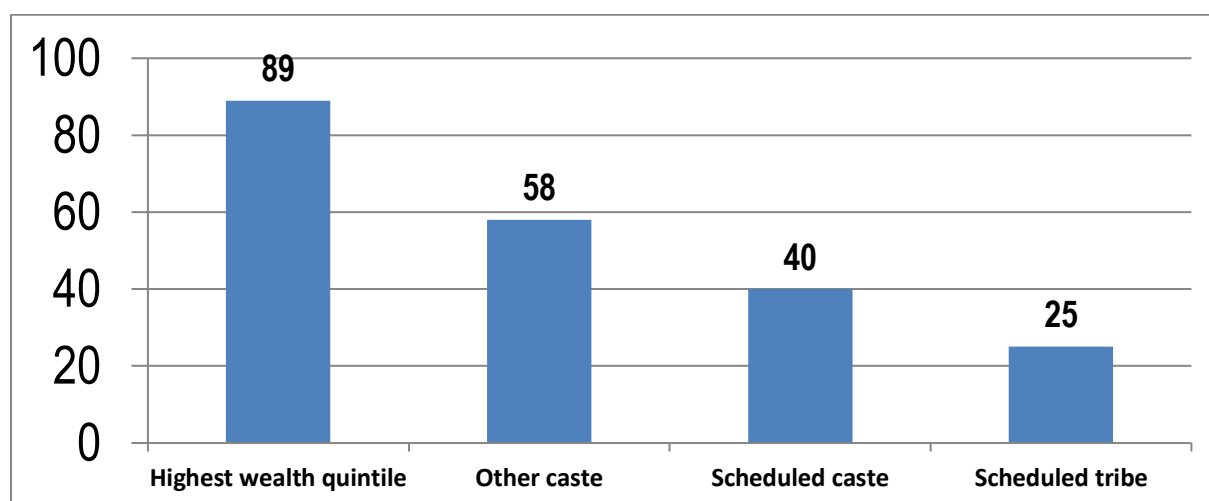
Box 2: Melghat: Years of Reporting Malnutrition

Melghat, a forested region in Maharashtra inhabited mostly by the Korku tribe, has long been a metaphor for starvation. Every year, there are estimates of deaths on a large scale among tribal children. Any attempt at understanding tribal deprivation in Melghat is incomplete without a historical account of the region. The major part of Melghat is covered by the Tiger Reserve (a buffer zone) and a reserve forest. Conversion of the forest in 1974 into a buffer zone to protect tigers has meant an occupational shift for the Korkus, who were traditionally gatherers of forest produce. This has precipitated problems in recent years. The government has banned the collection of products such as *kendu* or *tendu* leaves (*Diospyros melanoxylon*), which are used in the production of *bidi*, an Indian cigarette. The Korkus also have limited access to hunting and fishing. The introduction of cash crops such as soybeans instead of local crops such as *kodo* (a type of millet grain) and *savarya* (a local crop used to produce a drink) has upset the balance of food security. Some Korkus therefore migrate and then return during the monsoon to transplant rice and other crops on their subsistence plots of land. This is the time when household food stocks deplete rapidly, and cash for the purchase of food is scarce. The local administration, which is located far away has difficulty responding to issues in a timely manner. Moreover, most line officials perceive the Korkus as ignorant people, selling their nutritious food such as *tur* (a bean) and *gram* (mung bean) for cash. To this, tribal people respond, “Do you think we don’t like to eat lentils? We sell them because we have to pay back loans from the landlord.”

Source: Das (2010)

The National Family Health Survey 4 (NFHS-4) data show that the indicators for scheduled tribe and scheduled caste women are worse than those of 'other caste women' (the women who are higher up in the caste hierarchy). Many health indicators reflect this disparity: 23.7 % scheduled tribe women and 19% scheduled caste women are moderately to severely anaemic compared to 14% 'other caste women'. Similar differences are seen in nutritional status: 21.2% scheduled tribe women and 18% scheduled caste women are moderately/severely thin compared to 13.1% 'other caste women'. Women not receiving any antenatal care tend disproportionately to be women with no education, those in households with lower wealth index, and those who belong to a scheduled tribe. 63.1 percent of tribal children under five years are affected with anaemia in the country, compared to 53.9 percent of children belonging to the general category. Research has shown that an indigenous person in India is 1.2 times more likely to experience excess mortality compared to a non-indigenous person with the same standard of living. Deliveries with the help of skilled birth attendants (SBA) are also very low for ST women as compared to others:

Figure 1: Percentage of women who delivered the babies in the presence of a SBA



Source: (MOTA 2015)

As per the 2017 Annual Health Survey, 44% of women in the age group of 18 to 59 years in Koraput, a tribal district of Odisha, had body mass index below 18.5 kg/m², and 80% of them were anemic. According to the NFHS-4 malnourishment of children under five years in 2015-16 was highest (Table 6) among STs.

Table 6: Malnourished children for various social groups

Social group	Stunted (%)	Wasted (%)	Underweight (%)
ST	43.8	27.4	45.3
SC	42.8	21.2	39.3
OBC	38.7	20.5	35.5
General	31.2	19.0	28.8

Widespread poverty, illiteracy, absence of safe drinking water and sanitary conditions, and ineffective coverage of national health and nutritional programmes are the major contributing factors for dismal malnutrition indicators of tribal communities.

3.4 Wage Employment

A government report on district Balaghat (MP), which has more than 50% population of tribals showed that out of 3.5 lakh job cards issued in the district under NREGA only 94 thousand (27%) were issued to ST labourers. In the year 2008-09 out of 135.47 lakh employment days generated the share of ST population was only 40.07 (29%), which is far less than their share in population or share in poverty (Aggarwal et al. 2012)..

A common criticism of the NREGA is the poor quality of assets created under the programme. NREGA permits creation of assets on the fields of certain category of farmers but delays in wage payments also lead to tensions between the land owners and NREGA labourers. A study of Ranchi, a tribal district of Jharkhand,

showed that such delays often force the land owners to make temporary wage payments to the labourers from their own pockets, a practice that may lead to corruption or disputes. NREGA workers are supposed to be paid directly by the government through their bank or post office accounts. In cases where the workers have received temporary payments from the land owner, they have to reimburse him or her after getting their wages from the government. At that stage, some land owners may try to extract more money from the workers than is due to them, or quarrel with the workers over the amounts due (Aggarwal et al. 2012).

In general a good evaluation of NREGA in tribal areas should answer the following questions:

- Are workers getting their entitlement to work on demand?
- Is payment of wages being made within 15 days?
- Are there basic worksite facilities, creche, shade, drinking water?
- Is there a grievance redressal system?
- Are assets being monitored?
- Is investment leading to drought proofing?
- Is unemployment allowance being paid to those who demand work, but get it for less than 100 days?

It is likely that none of these questions will have a positive reply, depicting lacuna in the delivery of the programme, especially in poorly governed tribal areas.

The pathetic status of outcomes for tribals from flagship programmes is admitted in the 12th Plan document too. We quote below:

.....*‘CONDITION OF TRIBAL WOMEN*

20.1. *Tribal women make for among the most vulnerable people in India. They are faced with a double discrimination of being tribal and being a woman within the tribal households. In LWE areas women are battered and raped by both the government and the rebels and there is no system of security or redressal for the same. As tribal women move out of their households to find work as domestic workers, they are exploited in their work-space too.*

20.2. *The figures for literacy among tribal women are extremely low. The levels of awareness about government services, health issues like AIDS, avenues for employment etc are also extremely low among tribal women and as a result of this, they neither are able to access the services available nor are they able to explore their potentials to the fullest.*

20.3. *Basic amenities are completely absent from tribal settlements. Absence of electricity and basic sanitation facilities impacts the women the most. Only 15.2% of ST households have drinking water which further spells out the burden on the women.....’*

However in the absence of concrete plans to address the development deficit, coupled with failure to measure periodically the progress of all flagship programmes and policies through tribal lens, the above description is merely shedding crocodile tears. Above all the Niti Aayog has never measured the pathetic state of governance in tribal blocks on a periodical basis.

Though government seems to be obsessed with “Left Wing Extremism” (LWE) it focuses little attention on *adivasi* disaffection, which was also the central argument of the 2008 report of the expert group set up by the Planning Commission, as it placed less emphasis on security measures and more on addressing long-term grievances of *adivasis*. On 24 July 2010 the then Prime Minister Manmohan Singh said at the National Development Council about the concerns of the *adivasis*, 'First, we must recognise that good governance alone gives people a sense of participation and empowerment. In this context, effective implementation of the Forest Rights Act and PESA are of critical importance. Failure to implement these laws in letter and spirit reduces the credibility of our commitment to bring development to these neglected areas.'

Briefly speaking, the following persistent problems have by and large remained unattended, and need to be immediately redressed:

- Land alienation and indebtedness
- Loss of access and control over forests
- Involuntary displacement due to development projects and lack of proper rehabilitation
- Ineffective implementation of PESA Act for Schedule V areas
- Shifting cultivation, and
- Weak governance, and poor programme delivery

We discuss below the above issues, and how these can be improved.

4 LAND ALIENATION

Settled agriculture is the main source of livelihood for *adivasis* today. However, tribal land alienation is the most important cause of the pauperisation of tribal people, rendering their economic situation, which is extremely vulnerable even at the best of times, even more precarious. Para 24.173 of the 12th Plan document admits that land 'has been going out of their possession because of their ignorance of laws, deceit, coercion, and other manifold methods followed by misappropriations of tribal land, all in violation of laws, often in collusion with elements in the official machinery and elements in the political leadership of State Governments.' We discuss below the evidence based on secondary literature.

In Andhra Pradesh, for instance, non-tribals today own more than half the land in Scheduled Areas of the state. In Madhya Pradesh the percentage of Scheduled Tribe

cultivators to total Scheduled Tribe workers fell from 76.45 per cent in 1961 to 68.09 per cent in 1991. Correspondingly the percentage of Scheduled Tribe agricultural labourers to total Scheduled Tribe workers rose from 17.73 per cent to 25.52 per cent. Studies have indicated that in Orissa 54-56% of tribal land has been lost to non-tribals over a period of 25-30 years through indebtedness, mortgage and forcible possessions (Planning Commission 2000). What is more significant is the fact that tribals have lost possession over the most productive land, leaving them to cultivate poor quality land that makes their fragile economy more vulnerable to natural calamities.

With the massive encroachment of non-tribals to tribal areas, many of the areas previously occupied by the tribes cannot now be declared as a scheduled area. For example, in Kerala the entire Wayanad district was once the tribal land alone. But now none of the Taluks of Wayanad district can qualify as scheduled area. Hence, the right of the tribals for administrative autonomy is lost. This is true of many other areas as well. The traditional abode of tribals is now inhabited and controlled by non-tribals. Therefore, in addition to restoring lost lands to them, government should seek to redefine the concept of 'scheduled area' so as to ensure maximum extent of administrative autonomy to tribals.

The studies also establish the sad fact that government policy itself has, directly or indirectly, contributed to the phenomenon of tribal land alienation. It has been noted in several states that tribal land is being legally auctioned by co-operative credit societies and banks to recover dues. Auctioned land is purchased by non-tribals as well as rich tribals.

Land records - The official land records in central India are in a bad shape and have often ignored tribal occupation. For instance, in Orissa, cashew plantations were raised by the Soil Conservation Department on 120,000 hectares of "Government Wastelands" in Schedule V areas. In many cases such lands in the past were under cultivation by tribals but their rights were not recorded. When settlement took place, tribals because of their ignorance were not in a position to get their possessions recorded, and thus land under their possession got recorded as government land and the poor tribals got described as encroachers even on lands which were cultivated by their ancestors. These cashew plantations, raised on land that was supporting livelihood needs of tribals, were handed over to the Orissa State Cashew Development Corporation for management. As the Corporation could not run profitably, it started giving annual leases for harvesting of cashew crops to private parties through open auctions. This is land reforms in reverse! It is ironical that these plantations that deprived the tribals of their possession were funded by a scheme called, 'Economic Rehabilitation of the Rural Poor' (Planning Commission 2000).

The Ministry of Tribal Affairs should do a quick study of the loopholes in various state laws, and come up with model legislation for both, restoration of alienated lands as well as to check further transfer. Amendments in the Madhya Pradesh Land Revenue Code, 1959 through the section 170(B) of the Code may serve as a good

model. It instituted *suo moto* responsibility of the revenue court to enquire into all transactions from tribal to non-tribal, even without an application from the tribal. The burden of proof was shifted to the non-tribal to prove that fraud did not take place, and the presumption of the court supported the legal rights of the original tribal landowner. Appearance of advocates without permission has also been debarred in these proceedings. There is provision for only a single appeal to the Collector. However, non-tribals have been able to delay proceedings by resorting to revisions. One must plug such loopholes too.

Section 211 of the UP ZALR Act, applicable to usurpation of tribal lands by outsiders in the tarai lands (now mostly in Uttarakhand) may also serve as a model. It reads as follows:

“211. (1) Where any land held by a tenure-holder belonging to a Scheduled Tribe is in occupation of any person other than such tenure-holder, the Assistant Collector may, SUO MOTU or on the application of such tenure-holder put him in possession of such land after evicting the occupant and may, for that purpose use or cause to be used such force as may be considered necessary, anything to the contrary contained in this Act notwithstanding.

(2) Where any person, after being evicted from any land under sub-section (1), re-occupies the land or any part thereof without any lawful authority, he shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than six months and also with a fine which may extend to three thousand rupees but which shall not be less than one thousand rupees.

(3) Any court convicting a person under sub-section (2) may make an order to put the tenure-holder in possession of such land or any part thereof and such person shall be liable to eviction without prejudice to any other action that may be taken against him under any other law for the time being in force.

(4) Every offence punishable under sub-section (2) shall be cognizable and non-bailable.”

Passing of such laws by the state governments should be accompanied by simplification of judicial procedures, constitution of special courts, and sensitization of district officials. The progress of restoration of lands should be carefully monitored by an assessment of total area alienated, fixation of annual targets for the states, and its supervision by a high level empowered committee chaired by the Cabinet Secretary, with at least two members in this committee from the civil society with experience of working in tribal areas. Such a committee should meet at least once a quarter and its minutes should be kept on the Ministry’s website.

Moreover legal aid should be provided to tribal communities so that all pending land disputes are monitored and settled immediately so that tribals do not face constant harassment from non-tribals, revenue and other departments. Regular updating of land records, proper and regular conduct of Jamabandhi, display of revenue details at the village level should also help to achieve this objective. Sample surveys should

be done to assess how many tribals have legal *pattas* with them, and how this number has changed over the years.

Box 3: Land Alienation in Maharashtra

Only 57 per cent of tribals in Maharashtra own land. However, the continuous onslaught by capital is slowly but surely eating into this survival base of the *adivasis*. This is due to the high rate of urbanisation and industrialization, increasing tourism and farmhouse culture on the one hand and displacement due to projects on the other. Land reform legislations had the opposite effect to what was intended. After the passing of the Bombay Tenancy and Agricultural Lands Act in 1957 the number of tribal cultivators fell from 7.25 lakhs in 1961 to 5.61 lakhs in 1971. Even the Restoration Acts have had very meagre success. There appears to be a trend towards the withdrawal of the protective legislations. Infrastructure development for SEZs is leading to tribal land alienation in the hinterland.

Lobo (2011)

Legislation prevents Adivasi land from being alienated, but this can be a double-edged sword. It may mean that tribals cannot sell their land to non-tribals even if they wish to, but that land grabbing can continue regardless. There are several ways in which this can happen: through fraud by contractors and lenders under the garb of recovering loans from tribals, through marriage and the subsequent sale or transfer of land by tribals to non-tribals, through the forcible eviction of tribals by non-tribals or public authorities, and through the conversion of tribal land from communal to individual ownership (World Bank 2011). Furthermore, the law does not cover tribals living outside scheduled areas, and these people also face eviction as often (if not more often) than tribals in scheduled areas. In any case, a large majority of tribals can claim only nominal ownership of their land because there are no land records or titles to prove their ownership. This makes eviction relatively easy. Thus, while the government allots land to tribals under various schemes, substantive ownership is not given. In a study of more than 8,000 cases of land dispute following land reform in 316 villages in Madhya Pradesh, Ekta Parishad, a nongovernmental organization working in the state, found that nearly 85 percent of the disputes had arisen because of the inability of the land allottees to take control of the land or because the land had not been transferred to the rightful cultivators (Ekta Parishad 2002). About 87 percent of the cases involved *Adivasis* and *Dalits*. Moreover, litigation around land issues is heavily weighted against the tribal poor, “most of whom despair and are pauperized before the almost unending legal battle reaches its conclusion” (Mander 2002). This suggests that even measures such as land reform may not help unless ownership is secured through land records and is proven for all purposes of implementation.

In order to prevent land alienation what is required is:

1. A strong political will to dispose of the cases
2. Transparency and access to land records at the village level to tribals in the local languages, not only in English
3. Speedy disposal of cases where tribals are involved and oral evidence to be considered where records are absent
4. All pending land disputes should be settled immediately so that tribals do not face constant harassment from non-tribals, revenue and other departments
5. Regular updating of land records, proper and regular conduct of Jamabandhi, display of revenue details at the village level should be implemented
6. Where lands are restored to tribals, the non-tribals get stay orders from the courts. This should not be allowed as the lands are again in the enjoyment of non tribals.
7. Tribals and NGO's should be allowed to participate in the process of survey of lands
8. Villages with majority tribal population adjoining scheduled areas should also be included in scheduled areas; specific pockets of majority tribal (ST) population which have been excluded from scheduled area should be scheduled
9. Sufficient staff should be posted in the revenue department for speedy settlement of cases
10. States which have specific pockets of tribal areas/population should demarcate these pockets as scheduled areas as under the Fifth Schedule of the Constitution
11. All States with Scheduled areas should have the prohibitory clause on transfer of lands from tribals
12. All tribal villages in forest areas should be settled immediately

4.1 Indebtedness

The fundamental reason for tribal land alienation is the fragile, constantly shrinking economic base of the tribals. As most banks and cooperative institutions are unwilling to provide consumption loans, moneylenders are the only source of consumption credit for them. This leads to an extreme dependence on moneylenders on the part of the tribal, keeping him in perpetual debt and resulting in the mortgage and ultimate loss of his land. Though this phenomenon is common enough, another particularly tragic outcome of this indebtedness is the phenomenon of bondage, wherein people pledge their person and sometimes even that of their families against a loan. Repayments are computed in such terms that it is not unusual for bondage to persist until death, and to be passed on as a burdensome inheritance to subsequent generations. The persistent problem of indebtedness amongst the tribals is one of the manifestations of their poverty. Despite the existence of legal/protective measures to curb the business of money-lending in tribal areas and provisions for debt-relief, their enforcement has been weak and ineffective. Also, the non-recognition of the tribal needs for their day-to-day consumption purposes by various credit extension programmes makes the otherwise vulnerable tribals fall as easy victims into debt-

traps. Although the practice of bonded-labour stands abolished in the country through an Act of Parliament viz., the Bonded Labour System (Abolition) Act 1976, yet a total number of 2.52 lakh bonded labourers (including STs) were identified in March 1993 in 12 States i.e., Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Maharashtra, Uttar Pradesh, Kerala, Haryana and Gujarat. According to the 2016 Global Slavery Index, India has the most slaves in the world. There are an estimated 46 million people enslaved worldwide with more than 18 million of them in India (Hindustan Times, Nov 05, 2017).

Therefore immediate action is needed to review both the laws and their implementation to free tribals for indebtedness and bondage. In addition, positive measures to improve flow of institutional credit for consumption through self-help groups and to start more grain banks need to be taken. Long term solution will obviously lie in strengthening tribal livelihoods through access to water, credit, and other resources for higher productivity.

The public distribution system (PDS) should be strengthened to ensure regular food supply. Grain banks should be established to ensure food availability during crises. Government must fix measurable target and suggest that the flow of PDS grain would improve from a low of 3 kg per family per month (a study showed that it was only 2.3 kg) to at least 25 kg (government entitlement is for 35 kg) per card per month in a year's time. Similarly the total grain handled by state governments should show a marked improvement in a given period of time.

5 TRIBALS AND FORESTS

There is much evidence to show that tribals' access to forests for meeting their basic subsistence needs has deteriorated in the last seventy years, and that this is fairly widespread. Some of the processes which have caused this are; deforestation, preference for man-made plantations in place of mixed forests, regulatory framework, diversion of NTFPs and forests to industries, nationalization of NTFPs, and exploitation by government agencies and contractors in marketing of NTFPs. Most pressing is the issue of tribal eviction from forest lands (Saxena 1999).

5.1 Forest Rights Act, 2006

One of the major reasons for tribal pauperisation is the wholesale classification of huge tribal occupied lands as state property (60% of 'state' forests are in 187 tribal districts). The problem of evictions and deprivation of access to essential social welfare services is rooted in their lacking tenure and access to the very basis of their livelihoods being snatched away from them.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as the Forests Rights Act (FRA), was enacted in 2007 through the Ministry of Tribal Affairs (MoTA) to correct the 'historic injustice done to forest-dwelling communities'. These communities were cultivating/occupying forest land and using forest produce since ages but had no tenurial security, as their rights of occupation and usage were not recorded during

the settlement process. Broadly speaking, this Act recognizes and vests individual forest-dwellers with forest rights to live in and cultivate forest land that was occupied before 13 Dec 2005 and grants community forest rights to manage, protect, regenerate the forest, and to own and dispose minor forest products from forests where they had traditional access.

The progress on recognition of individual forest rights (IFR) and community forest rights (CFR) varies a great deal from state to state and is shown for some states in Table 7. In ten States the implementation process has been very slow or has not started. This includes most of the north-eastern states (except Assam & Tripura), Uttarakhand, Himachal Pradesh and Goa. In Tamil Nadu because of restrictive orders by the High Court on a petition filed, the progress has been slow. Some states (such as Jharkhand) have lagged behind in terms of both getting a plausible number of claims and in processing the received claims.

Table 7: Progress under FRA up to Nov 2018 (area figures are in 00 ha)

Region	Total forest area in 00 ha	Area under IFR in 00 ha	Area under CFR in 00 ha	Area under IFR as % of total forest cover	Area under CFR as % of total forest cover	Total area under FRA as % of total forest cover
Karnataka	36421	83	113	0.2	0.3	0.5
Jharkhand	23605	412	400	1.7	1.7	3.4
Odisha	50354	2512	1370	5.0	2.7	7.7
Telangana	28854	1200	1816	4.2	6.3	10.5
Madhya Pradesh	77462	3241	5331	4.2	6.9	11.1
Andhra	17161	2353	4484	13.7	26.1	39.8
Chhattisgarh	55586	3346	7347	6.0	13.2	19.2
Gujarat	14660	513	4445	3.5	30.3	33.8
Maharashtra	50628	1065	10810	2.1	21.4	23.5
India	701673	17125	36833	2.4	5.2	7.7

Although counting both individual and community rights, more than 1.8 million titles have been issued covering 5.4 million hectares, in many places the area settled with the forest-dwellers is much less than their occupation; boundaries of the settled area is not demarcated; meetings of the *gram sabha* are being called at the *panchayats* level, as in Andhra Pradesh, and not at the hamlet or revenue village level as prescribed in the Act; and rejections are being done without assigning reasons. The picture is also dismal when it comes to recognising community forest rights (CFR), except in Maharashtra and Gujarat. Several studies (see five papers on FRA in Economic and Political Weekly, June 24, 2017, and Oxfam 2016) rightly point out weak capacity of the central and state tribal welfare departments and reluctance of the Forest Department to entrust village communities with management and control over forests as the main factors for the neglect of CFR provisions of the Act.

Forest officials, and for that matter many IAS officials too, believe that with some exceptions⁸ village communities are neither willing nor capable of sustained management of natural resources, except those that are privately owned, and therefore community rights, even where granted, are generally restricted to collection of MFPs, and not about rights to conserve or manage forests. Role of the *Gram Sabha* is undermined and its decisions are by and large influenced and dominated by external agencies like forest department (Saxena 2018).

About 23 lakh applications have been rejected. It is likely that many of such cases were genuine but got rejected on flimsy grounds, such as caste certificate not included or proof of 75 years of residence needed by non-tribal forest dwellers not attached, etc. Supreme Court has in February 2019 directed all states to re-examine such cases and inform the Court.

Granting of titles cannot be considered the end of the story. If the objective is to strengthen livelihoods of the forest dwellers, state governments need to take several initiatives. There has been little effort to improve productivity of assigned land by linking it with soil conservation works with NREGA funds, or provide crop loans and assist in marketing of harvested products.

Overall, it is hoped that while implementing the Act government will ensure integration of conservation and livelihood security. It could do this by explicitly mandating collaborative arrangements between communities and government agencies with help from NGOs, and by putting into place an integrated system of rights and responsibilities, or powers and duties, that would safeguard against misuse by either the community or the government. It may also mandate a national statutory body to examine state and site-specific processes of settlement, and to ensure that any new encroachments are immediately detected and acted upon.

5.2 Tribals' livelihoods through NTFPs

In addition to strengthening community rights over forests, government would have to address three inter-related issues; how to increase NTFP production, how to improve access of the poor to NTFPs, and how to maximize their incomes through marketing.

Norms for silvicultural practices were developed in times prior to the current scenario of high human and cattle pressures, and must now be adjusted accordingly. If the national objectives have changed to prioritise people's needs, there must be an accompanying change in silvicultural practices and technology. One requires a complete reversal of the old policies, which favoured commercial plantations on forest lands, and trees for consumption and subsistence on private land. "Scientific" forestry should therefore mean that environmental functions, wild fruits, nuts, NTFPs, grasses, leaves and twigs become the main intended products from forest lands and timber a by-product from large trees like sal. The reverse has been the

⁸ In many villages of Gadchiroli district of Maharashtra forest protection by communities has been sustained for the last several decades.

policy for the last 100 years. Although after the advent of the new forest policy in 1988 there have been great efforts to involve forest communities in management, more thought should be given to make necessary changes in the technology which will be suitable to the changed objectives.

Secondly, a government agency like the Forest or the Tribal Development Department assisted by civil society should be involved in informing tribals and gatherers about the prices prevailing in different markets, improve marketing practices, and act as a watch-dog. It may be worthwhile to examine if promotional Marketing Boards, as distinct from commercial corporations (which are inefficient, and hence demand monopoly), should be set up with responsibility for dissemination of information about markets and prices to the gatherers.

On paper the state agencies have worked with multiple objectives: to collect revenue; to protect the interests of the tribals as sellers; and to satisfy the conflicting demands by industry and other end-users. In practice, a hierarchy of objectives developed: industry and other large end-users had the first charge on the product at low and subsidized rates; revenue was maximized subject to the first objective which implied that there was no consistent policy to encourage value addition at lower levels; tribals and the interest of the poor were relegated to the third level (Saxena 2004).

Clearly *laissez faire* is not going to help the poor in all cases. Where government alone does marketing it is inefficient; and where it is left to private trade, it may still not provide sufficient returns to the gatherer on his labour. Thus de-nationalisation per se may not remove all market constraints which inhibit a gatherer in realising the full value of his labour.

Government should encourage bulk buyers and consumers such as exporters of herbal medicines establish direct links with the villagers. Government should also address issues like creating proper marketing yard, market information system, storage space and minimum processing facilities at the local level. Simple processing activities such as broom making, leaf plate making, tamarind processing, mat and rope making should be encouraged in the household/ cottage sector.

There should be minimum support prices for non agricultural produce on the lines of minimum support prices for agricultural produce. Aggressive buying of NTFPs by state agencies, as has been done for wheat and rice, alone can break the dominance of the wholesale traders and their linkages with the village level market. The nature of produce and actors involved makes it obvious that without government support there can be no justice to forest gatherers. Therefore such organisations should compete with private trade, and not ask for monopoly.

While assigning a bigger role to government institutions, which were earlier accused of inefficiency, collusion with traders, and callous attitudes towards forest gatherers, care needs to be taken that there is all round improvement in governance and efficiency of the States' organisations. Collaboration with socially committed private sector/exporters should also be considered.

Standing Committee on Ministry of Tribal Affairs (2011-2012) (Fifteenth Lok Sabha) observed:

“...On the ownership rights of the tribal people with regard to minor forest produce, the Committee had recommended the Ministry to work with States and prepare specific action plans for harnessing the potentials of minor forest produce. The Committee are, however, disturbed to note that the Ministry have not taken any concrete action in this regard. The Committee feel that merely advising the States to prepare action plans for harnessing the potentials of minor forest produce, its scientific procurement and marketing without giving them proper direction and ways and means to work on the above would not suffice as States on their own would not be motivated to do anything in the field/area of minor forest produce unless there are clear instructions and directions in this regard from the Centre. The procurement and harnessing of Minor Forests Produce (MFPs) is an important right recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forests Rights) Act, 2006 and several States/UTs have dense forests with unique MFPs which needs Governmental intervention as far as scientific procurement and their harnessing is concerned. The Committee also recommend that the States should be guided to form co-operative societies for procuring and marketing of Minor Forest Produce (MFP) in the lines of those already existing in some States like Andhra Pradesh etc. Therefore, the Committee reiterate their earlier recommendation and recommend that the Ministry in coordination with the States should prepare specific action plans keeping in mind the State specific conditions for better harnessing, procurement and marketing of minor forest produce and implement these so as to benefit the tribals whose rights have been recognized under the Act...”

To conclude, rather than be a monopoly buyer of NTFPs, government should adopt market friendly policies, facilitate private trade, and act as a watchdog rather than eliminate the trade. It should encourage local bulking, storage and processing, and bring large buyers in touch with the gatherers, so as to reduce the number of layers of intermediaries. Lastly, it should provide minimum support price, as is done for wheat and paddy farmers.

5.3 Convert forest villages into revenue villages

The unique aspect of forest villages is that these are not illegal as they have been set up by the forest departments themselves. Many of them are 80 to 90 years old when the colonial government initiated commercial forest exploitation and needed the availability of labour in uninhabited forest areas for their forestry operations. As long as commercial forest management continued, the residents of forest villages had wage work for several months of the year. In addition, the forest departments allocated some land to them for subsistence cultivation besides permitting them to collect NTFPs and other forest products for meeting their domestic requirements. Their livelihoods have however come under increasing constraints in the last four

decades. Felling bans and reduced commercial forest exploitation has created a crisis of work availability for such villagers, particularly due to their remote locations.

The condition of such villagers has become even worse where the areas where they are located have been declared national parks or wild life sanctuaries under the Wildlife Protection Act. In such areas, particularly after the Supreme Court order of 14.02.2000 banning the removal of dead fallen and decaying trees as well as grasses etc. the livelihood crisis has become truly acute.

One of the common problems faced by all forest villages is that the land on which they are located, irrespective of its being partly under cultivation and partly under habitation for several decades, on paper remains recorded as forest land. Although Govt. Of India decided in the mid-1970s to encourage conversion of all forest villages into revenue villages through granting secure land titles to their inhabitants, enactment of the Forest Conservation Act in 1980 became a serious hurdle for state governments to undertake such conversion. The residents of forest villages today are like forgotten people invisible to society and government at large, left suspended in a legal vacuum that deprives them of basic fundamental rights enshrined in the constitution.

Consequences of lacking land title - Not having title to the land which they cultivate and on which they live deprives them of the following entitlements:

- They cannot get any bank loans.
- The tehsildar, apparently the only official authorised to do so, refuses to give them domicile certificates on the grounds that the land is under the forest department's jurisdiction. The forest department does not seem to have either bothered to obtain the authority for issuing domicile certificates for such people or is not permitted by law to issue them. Whatever the legal technicalities, the villagers are deprived of access to a critical document which is their passport to several other benefits/entitlements.
- Lack of a domicile certificate means that they cannot get a Schedule Caste/Tribe certificate depriving the predominantly tribal residents of all the special benefits meant for SCs/STs. They cannot apply for jobs/educational facilities reserved for such groups.
- Lack of land title also deprives them of housing assistance under the Indira Awas Yojana.
- Many of them do not have access even to BPL cards to enable them to avail of subsidized goods under the PDS. They have to purchase foodgrains at market prices.
- During a drought, they are not entitled to compensation for crop loss due to not being covered by crop insurance.
- Government functionaries avoid visiting the villages, as the forest department discourages their presence in its 'jurisdiction'.

The Ministry must get all the 4300 forest villages declared as revenue villages.

6 DISPLACEMENT AND RESETTLEMENT

Nearly 85 lakh tribals had been displaced until 1990 on account of some mega project or the other, reservation of forests as National Parks etc. Tribals constitute at least 55 percent of the total displaced people in the country. This percentage is even higher for some states, such as Gujarat, where it is 76% (Patel 2011).

Box 4: Development for whom?

All major irrigation projects in Gujarat have stripped Adivasis of their upstream lands and livelihoods, while benefitting non-*adivasis* downstream. The Land Acquisition Act imposed a two-fold punishment to *adivasis*, by rendering them landless, their lands were acquired at very low value as these were in the midst of forests with no commercial value, but irrigation caused a surge in the land prices which were outside the purchasing power of the displaced *adivasis*. Meagre Cash payment does not really compensate the tribals for the difficulties they experience in their living style and ethos.

Patel (2011)

The compulsory acquisition of land for public purposes and for public sector or private sector companies displaces tribals, forcing them to give up their home, assets, means of livelihood and cultural traditions, and to reside elsewhere and start their life all over again. It has been an important reason for their pauperisation, often leading them to a state of shelter less and assetless destitution. The presumption that displacement is an inevitable consequence of all development efforts needs to be reassessed in the light of the enormous cost of human suffering of such projects. The need to avoid such large-scale displacement, particularly of tribals, and in cases of unavoidable displacement, their comprehensive resettlement and rehabilitation (R&R), has become one of the central issues of the developmental process itself (Fernandes and Paranjpye. 1997).

The Niyamgiri victory against Vedanta and Sterlite – two major corporations - was a major triumph of a people's movement, which had the support of an international campaign to protect the Kondhs, a PVTG group. Their community rights to the forests in and around the Niyamgiri Hills were in jeopardy. The findings of the N C Saxena Committee revealed that the state government and Vedanta and its associate companies had engaged in both acts of omission and commission.⁹ The mining company had violated the Forest Conservation Act by illegally occupying 26 hectares

⁹ See the writ petition filed by the Orissa Mining Corporation against the Ministry of Environment and Forests and others in the Supreme Court in 2011 and the response of the Ministry which showed that the claims of the Orissa Mining Corporation were false that no tribals lived in the area and therefore no compensation would be necessary. The N.C.Saxena committee report was used as evidence. "In the Supreme Court of India, Civil Original Jurisdiction", Writ Petition (Civil) No. 180 of 2011, Orissa Mining Corporation (Petitioner) versus Ministry of Environment & Forests & Others (Respondents). K.S. Radhakrishnan was the Judge.

of village forest land in the area. It had brazenly embarked on construction activity to expand its production capacity at its aluminium refinery complex from 1 to 6 million tonnes per annum without obtaining clearance under the Environment Protection Act. The refinery was also obtaining its ore from 14 mines, 11 of which did not have environmental clearance.¹⁰ The judge noted that "... the de facto dependence on the Niyamgiri forests for the past several decades can be ignored by the central and state governments only at the cost of betrayal of the promise of inclusive growth and justice and dignity for all Indians."¹¹ But as the *Economic and Political Weekly* points out, "For every Niyamgiri there are hundreds of other cases where corporate interests, and the state and the central governments have colluded to trample on the lives of local people."¹²

Today, project affected people are no longer in a mood to suffer passively. The large-scale protests against major mining companies by tribals in the case of Vedanta Alumina in Kalahandi and TISCO in Kalinganagar in Orissa are examples in the long history of resistance to mining. Consequently, there has been growing protest and militancy leading to tensions, conflict and violence. Unsatisfactory arrangements for their rehabilitation and resettlement creates opposition to acquisition of land, and ultimately the costs involved in delayed acquisition of land is much more than the cost that would be incurred in case of a satisfactory compensation and rehabilitation. A well intended, liberal and comprehensive resettlement and rehabilitation policy is therefore required not only to protect the interests of the displaced or adversely affected people but also in the public interest to ensure quick acquisition and faster access to such acquired land.

Experiences of displacement and rehabilitation in India have revealed a long history of lack of rehabilitation or ill-planned, badly executed, inadequate and inappropriate rehabilitation. Even according to Government estimates only 29% of the affected have been rehabilitated, leaving almost 13.2 million people uprooted from their homes. (Roy 1994). All that the displaced persons are left with is their labour - most often unskilled and are therefore desperate for whatever work comes their way for survival. In addition, displacement of tribals from their land amounts to violation of the Fifth Schedule of the Constitution as it deprives them of control and ownership of natural resources and land essential for their way of life.

However, tribals do not have a blanket objection to all mining. They usually want environmental sustainability to be ensured and to receive adequate benefits from the mining activity. If benefits of development, particularly large industry or mining, are

¹⁰ "Niyamgiri Triumph" (2010) *Economic and Political Weekly*, vol. 45, no. 35, p.7. JSTOR, www.jstor.org/stable/25742009

¹¹ "In the Supreme Court of India, Civil Original Jurisdiction", Writ Petition (Civil) No. 180 of 2011, Orissa Mining Corporation (Petitioner) versus Ministry of Environment & Forests & Others (Respondents). K.S. Radhakrishnan was the Judge, p.22

¹² "Niyamgiri Triumph" (2010) op.cited, p.7

shared more equitably and if tribals are involved in the process of decision making, the solution will be more sustainable. The landmark Supreme Court judgment, *Samatha v. State of Andhra Pradesh, 1997* (known as the Samatha judgment) has laid out the contours of benefit sharing in mining. The judgment describes the tension between the rights of the state and the state's responsibilities to citizens, tribals in particular, in the exploitation of mineral resources. Its conclusion is clear: the state has the right to exploit mineral wealth, but the state also has the duty to safeguard the interests of tribals who reside in mineral-rich areas. It also lays out a framework for sharing the benefits of mining between private companies and citizens, with the state acting as facilitator and enforcer.

6.1 The New Land Acquisition Law, 2013

The clause in the new 2013 law requiring consent at least seventy per cent of the project affected people is highly welcome. It is unfortunate that Gujarat in 2016 diluted the Land Acquisition Act and has done away with social impact assessment and consent clauses for acquisition of land for public purposes, industrial corridors and Public Private Partnership projects.

Often land values go up after acquisition and the original owners feel cheated when they find that their land after a few years is being sold for ten times the price that was paid to them. Therefore, whenever land acquired by government is transferred to an individual or a company for a consideration, 20% of the appreciated value should be given to the original land owner. In addition, Government must ensure that displaced tribal families have a standard of living superior to the one before their displacement and, have a sustainable income above the poverty line. Gains to the displaced should be of the same scale as to the project beneficiaries.

Even under the new law of 2013, affected households are not compensated when forest or common lands and water bodies are resumed by government and passed on to private bodies, on the plea that these are government lands and require no acquisition. In the absence of any protection the poorest people as users of common lands & forests and slum dwellers are thus deprived of their livelihoods without any rehabilitation benefits. This is particularly relevant in view of the state governments' reluctance to implement the community clauses of the Forest Rights Act.

Acquisition in Scheduled Areas – Section 38(1) of the Act does provide that ‘as far as possible, no acquisition of land shall be made in the Scheduled Areas. However, the next sub-section needs amendments. It states:

(2) In case of acquisition or alienation of any land in the Scheduled Areas, the approval of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central acts or a State Act for the time being in force as per the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 and other relevant laws.

There are two problems with the above formulation. Firstly, PESA does not provide for approval, but only consultation. Secondly, when the option of consulting (or seeking approval of) the *panchayat* is given to the state governments; they would never go to the *gram sabha*. They would just bribe the *panchayat* President to sign the papers. Therefore the above clause should be amended and drafted as follows:

(2) In case of acquisition or alienation of any land in the Scheduled Areas, the approval of the concerned *Gram Sabha* or *Gram Sabhas*, if land is in more than one *Gram Sabha*, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central acts or a State Act for the time being in force.

Even if the new Act of 2013 wishes to restrict itself only to consultation, keeping in tune with PESA, Ministry should ask the states to follow the detailed executive instructions that were issued by Government of India signed by me as Secretary Rural Development sometime in 1998 for acquisition of land in Schedule V areas to describe the modalities of consultation with the *Gram Sabhas* or with the *Panchayats* where more than one *Gram Sabha* is involved. The procedure to be followed for acquisition of land in Schedule V areas was deliberately made difficult so as to discourage projects to displace tribals. For instance, it provided that the company requiring land must produce a letter of consent from each of the concerned *Gram Sabha*, in favour of the proposed acquisition of land (see annexure for the complete order, which fortunately is still operative, though almost forgotten by the state governments). It is feared that the states may in due course of time ignore the provisions of the executive instructions issued.

In addition, the following guidelines should be adhered to, when tribals are displaced:

- Ensure that displaced families have a standard of living superior to the one before their displacement and, have a sustainable income above the poverty line. Gains to the displaced should be of the same scale as to the project beneficiaries.
- No displacement or resettlement of tribal villages for declaring any areas as National Parks or Sanctuaries should be allowed. The laws and policies should be adapted to strengthen this co-existence and in maintaining the ecological balance.
- Each PAP must be made literate and trained for semiskilled or skilled jobs. All unskilled new jobs and semi-skilled direct employment created in the project would go to the tribal PAPs on a priority basis. Even those private enterprises (such as ancillary industries and contractors) that benefit from the project would be charged in the same manner with responsibility for providing skills and jobs to such people. The displaced people should be resettled as near as possible to the developmental project sites so that they get multiple access and facilities as well as economic benefits generated out of the developmental projects.

- If land is acquired for a commercial undertaking, 20% shares should be given to PAFs free and equitably. For Schedule areas this percentage should be 50, to honour the spirit of the Samatha judgment.
- All benefits to persons/families, if further displaced within a period of 20 years, shall be doubled.
- No land shall be acquired under the Act unless the process of land acquisition is accompanied with rehabilitation of affected people.
- 'Rehabilitation' should be defined as "having been achieved when the income of the affected people has been brought above the poverty line and above their previous income".
- Principle of land for land for tribals in all projects and not merely in the irrigation projects should be incorporated in the Act.
- Minimum 10% of the project cost should be spent on RR, not including compensation.
- Consent award would be the primary mode of settling the amount of compensation, which should not be less than the replacement value of the asset.
- It should be possible for the Collector to give a monthly or a quarterly stipend in place of lumpsum payment for the amount of compensation that can be put in the bank, in a joint account.

7 PANCHAYATS IN SCHEDULED V AREAS

For the predominantly tribal Scheduled V area of Central India, Government had passed an Act 'The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996' (popularly known as PESA Act). It came into force on the 24th December 1996 and extends Panchayats to the tribal areas of now ten States; namely, Andhra Pradesh, Telangana, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan. The Act intends to enable tribal society to assume control over their own destiny to preserve and conserve their traditional rights over natural resources. PESA is unprecedented in that it gives radical self-governance powers to the tribal community and recognises its traditional community rights over natural resources.

In reality, however, since its passage it has almost been forgotten and has not become part of mainstream political or policy discourse. Many state governments have passed laws not fully in conformity with the central law. The implementation of the law has been severely hampered by the reluctance of most state governments to make laws and rules that conform to the spirit of the law. Weak-kneed political will has usually led to bureaucratic creativity in minimalistic interpretations of the law.

While PESA asked for the 'State legislation on the Panchayats' to be 'in consonance with the customary law, social and religious practices and the traditional management practices of community resources' and that the states take steps for making every gram sabha 'competent to safeguard and preserve the traditions and

customs of people, their cultural identity, community resources and customary modes of dispute resolution', the harmonization of related subject laws in the state has fallen far short of the intent of PESA.

It is unfortunate that the inadequacies of PESA have still not been set right. This is one of the most glaring omissions of government, despite the fact that the state governments' action of not passing laws in conformity with the GOI law amounts to violation of the Constitution. We summarise below some of the lacuna in the state laws, and how they violate the PESA provisions.

Section 4 (m) (ii) of this Act provides that -

"...while endowing panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the ownership of minor forest produce..."

Further, PESA required that state government would change its existing laws wherever these were not in consistent with the central legislation. Following the Central PESA Act, the Orissa Act has tried to circumscribe the constitutional provisions of the Central Act by adding a clause¹³ 'consistent with relevant laws in force' while incorporating the constitutional provision concerning the competence of the *Gram Sabha* to manage community resources and dispute resolution as per the customs and traditions of the people. Thus, tribals can have ownership rights over Minor Forest Produce, but only if the relevant state laws in force allow that. This is clear violation of the Constitutional Provision of the Central Act since in case of any inconsistency the relevant state laws have to be changed instead of negating the rights granted to *Gram Sabha* as per the Central Act in this regard.

In Andhra Pradesh too, there is a clear contradiction between PESA and GOM 173 dt. 7/12/96 of the Environment, Forest, Science and Technology Department. The Usufructory Rights of VSS (Vana Samrakshana Samitis, these are administrative committees under the control of the Forest Department) prescribed therein include, '(a) All Non-Timber Forest Produce except those for which GCC (Girijan Cooperative Committee, a governmental parastatal) holds monopoly rights. However the right to collection shall remain with the VSS members, if they so desire. The members shall be paid the collection charges upon delivery of the produce as per the rates fixed by the Government'. It can also be seen that there is a contradiction between the 'ownership' vesting in Gram Panchayats/Sabhas clause and the monopoly rights vested in GCC.

Secondly, whether bamboo constitutes major or minor forest produce is also an unsettled question in the field, despite FRA unequivocally declaring it to be MFP.

¹³ Many other states have also diluted the GoI Act. Both the Gujarat and Maharashtra Acts make ownership subject to the relevant state acts on NTFPs. The Maharashtra state Act leaves bamboo and cane out of the list of NTFPs over which ownership is granted to the panchayats.

The commonsense definition of MFP is 'that part of a tree that can be sustainably harvested without damage to the survival of the tree'. MFP is a product of the living tree, as opposed to timber which is product of the dead tree. More significantly, the state governments deny access to poor tribal artisans to two types of MFP, bamboo and cane, on which their livelihoods are most critically dependent. On the other hand, many state policies have subsidised bamboo for private industry.

Lastly, Government should not lease out forest lands to industries even through local institutions like Vana Samrakshana Samithis, particularly in the Scheduled Areas (as attempted by the Government of AP).

According to PESA, prior consultation with *Gram Sabha* or *Panchayats* at the appropriate level shall be made mandatory before acquisition of land for development projects. Here again the states have diluted PESA provisions. In Andhra Pradesh, *Gram Sabhas* have no role. Gujarat assigned this power to *Taluka Panchayat*. Orissa assigned the power to *Zilla Panchayat* with no role for the *Gram Sabha/Gram Panchayat*.

Similarly PESA lays down that recommendations of *Gram Sabha* or the *Panchayats* at the appropriate level shall be made mandatory before grant of prospecting licence or mining lease for minor minerals. Here again Andhra Pradesh gives no role to *Gram Sabha*. Gujarat does not make any mention of it. Himachal Pradesh retained primacy of *Gram Sabha* but the term 'shall be made mandatory' has been replaced by 'shall be taken into consideration'. Maharashtra assigns powers to *Gram Panchayat*, and *Gram Sabha* has no role in the matter. Orissa gives powers to *Zilla Parishad*, with no role for the *Gram Sabha* or the village *panchayat*.

Another PESA clause lays down that *Panchayats* at appropriate level and the *Gram Sabha* to be endowed with power to prevent & restore tribal alienated land. Gujarat, Himachal Pradesh, Madhya Pradesh Panchayati Raj Amendment Act do not make provisions for this. Only in Madhya Pradesh, the Land Revenue Code, 1959 has been amended to give power to *Gram Sabha*. However, the Code should have also laid down that no new entry in the ownership register will be permitted through sale or gift in favour of a non-tribal, unless it is approved by a resolution of the *Gram Sabha*.

These interpretations have almost killed the concept of ownership and control of local resources by *Gram Sabha*. In order to make the Central Act effective, it is necessary for the State Governments to make appropriate amendments in their State Laws/Acts which impinge on specific provisions contained in the Central Act namely (i) Land Acquisition Act; (ii) Excise Act; (iii) State Irrigation Act; (iv) Minor Forest Produce Act; (v) Mines and Minerals Acts; (vi) Land Revenue Code / Act; (vii) SC/ST Land Alienation Act; (viii) Money Lenders Act; and (ix) Regulated Market Act. No doubt, some State Governments (MP) have already amended some of the relevant Acts, others are yet to follow suit.

It is also to be noted that PESA, while being an enabling legislation, has been criticized for being vague and for not creating the right legal environment for its effective implementation. One of the criticisms has been a lack of articulation of the

precise scope of the Act and its interface with existing institutions/arrangements, such as PRIs as per the 73rd Amendment, Constitutional Provisions for the Fifth Schedule Areas, Provisions of National Forest Policy 1988 and the Forest Conservation Act.

It is therefore suggested that the Ministry of Panchayati Raj should get the state laws changed in conformity with the central law in a give time frame, and link central devolution to the states with such amendments.

8 TRIBAL DEVELOPMENT IN NORTH-EAST INDIA

Of the total tribal population in India only 12 percent live in the eight north-eastern states, but unlike central Indian states where they are in a minority, tribes constitute more than 80% of the state's population in Mizoram, Meghalaya, and Nagaland, and hence receive better political attention. For the past several decades however, some states in the Northeast have received a continuous flow of economic migrants from neighbouring states and Bangladesh, with the result that demographic balance has been tilting against indigenous population. Tribal population in Tripura declined from 56% in 1951 to less than 30% in 2001. In Arunachal Pradesh tribal population declined from 90% in 1951 to less than 64% in 1991. Bodos, a plains tribe of Assam, have become a minority in many districts of Bodo Autonomous Council and lost land to immigrant Muslims, leading often to large-scale violence.

An off-shoot of the population division is the unequal power relations between the tribals and the non-tribals (Ahoms in Assam, Meities in Manipur, and Bengalis in Tripura) who seem to dominate in political and economic power. Even within tribes there is a great deal of diversity. Northeast India has over 220 ethnic groups, they all have their own culture and tribal tradition and speak their own tribal languages. This culturally diversity of Northeast India also leads to inter-tribal conflict in many states, affecting peace and development.

Sixth Schedule - The Sixth Schedule to the Constitution of India was enacted so that the tribals, who were in a minority in the larger undivided Assam of the 1960s, can decide their own development models and also safeguard their customary practices and traditions which give them a unique identity. With the creation of tribal majority states of Nagaland, Mizoram, and Meghalaya, the context has changed. The Nagas did away with it once they attained statehood. The Mizos apply the Sixth Schedule only in respect of minority tribes within the State of Mizoram. However, Meghalaya has continued with Autonomous District Councils (ADCs) as another political institution that appears to be like a subordinate legislature – a place where those who fail to make it to the State legislature find temporary reprieve. These Councils were relevant when Meghalaya was part of Assam, so that tribal areas could have a sense of self-rule and not get lost surrounded by a large non-tribal majority. Now that Meghalaya is a separate state with more than 85% tribal concentration, tribal concerns are fully represented in the state power structure, and continuing with the autonomous district councils only creates confusion and duplication.

Another problem is that in the Sixth Schedule areas there is no other elective body below the level of the Council. Absence of grassroots level elected bodies affects the development of the remote rural areas. Below Autonomous Councils the traditional institutions at the village level do exist but they are not democratic in nature, and are clan based represented by the headman such as Syiem, the hereditary Chief of Khasi in Meghalaya. There is need to bring in elected grassroots level institutions at par with village panchayats of other states. However, a consensus in the matter is yet to emerge.

Economic inequality - Tribal people mostly live and earn through the hills and forest areas. Along with agriculture, they also depend on weaving and rearing of woolly animals. Most hill communities in the north-east practised shifting cultivation and their socio-political life was regulated by customary laws and practices. However, over the decades due to market penetration, several hill communities have taken to settled cultivation, and community ownership over means of production was gradually replaced by individual ownership, leading to economic inequalities. Laws exist to protect the locals against outsiders, but they could not stop class differences growing within. Today, among the hill communities, some are millionaires while most others do not even have an acre of land to cultivate. Interestingly, the neo-rich tribal elite are vociferous in asserting indigenous rights, not so much to benefit the poorest within communities, but to promote their own interests and keep the exploited poor under control. Privatization of communal lands is often the result of persistent promotion of commercial horticultural and other crops, as well as due to rising land values near towns and along highways. However the emerging tribal elite has no entrepreneurial talent to establish industry, and much investment is only in real estate.

Adverse impact on women - Privatisation has started increasing the vulnerability of women. For instance, as per Naga customary law, women have no land, property, or inheritance rights. There are instances that if they try to assert possession over land, they are branded as witches and are accused of causing harm to communities. These women are physically and mentally tortured. There is evidence of some being buried and even burnt alive. Cases of witch-hunting have mainly been reported from the Goalpara, Bongaigaon, Kokrajhar, Nalbari and Dhubri districts. Control over resources, personal enmity with powerful members of the community and the prevalence of superstitions are some of the factors responsible for witch hunting.

Absence of land records - Nagaland, Arunachal Pradesh, Mizoram, Meghalaya, hill areas of Manipur and some tribal tracts of Assam have no written land records system, nor any payment of land revenue. Absence of land records has increased insecurity of tenure of the poor due to rising tenancy and landlessness, increasing concentration of land ownership in the hands of a few, and declining output from shifting cultivation. The structural condition under which land is cultivated (open access or 'free for all') combined with the fact that the elite are able to corner most government funds has intensified poverty and inequality in these states. Cohesive social relations therefore co-exist with increasing economic disparities. We describe

below the status of land records in Meghalaya, a tribal and comparatively peaceful state.

Unlike other parts of India, government in Meghalaya did not claim ownership rights over the uncultivated forestlands of the indigenous people. Moreover there is neither any system of payment of land revenue, nor any record of land rights. Although theoretically land belonged to community, there were several ways that it could be privatised. Performing labour or, rather organizing labour, to cut a terrace or plant trees in an orchard, was recognized as conferring exclusive and permanent rights, although not recorded. The lack of a legal base means that tenancy works to the disadvantage of the weaker partners in the relationship, the tenants. The absence of any legal regulation works to the advantage of those with economic and political power. Measures like a cadastral survey to record actual land holding positions, tenancy, etc. have been consistently opposed even by the non-rich, as there is deep suspicion of the state, and the likelihood of imposing land revenue payments or other regulations.

There has been phenomenal growth in the number of agricultural labour due to increasing concentration of land in the hands of a few. The proportion of cultivators to total workers has fallen from 73.3 in 1961 to 48.1 in 2001, whereas the proportion of agricultural labourers has increased from 4.3 to 17.7% during the same period.

There are also instances where in the entire village the actual tillers do not own any land at all. They are merely tenants of landlords, who mainly reside in Shillong, the State capital. The tenants have rights only over the crops, but do not have any rights to forests.

The privatization of land that is going on throughout Meghalaya through enclosure of commons can hardly be viewed as a positive step because its impact on agrarian relations is retrograde. Individuals are acquiring permanent interest in the occupancy of a plot of land, which in turn is imputing monetary value to land. This may be resulting in the dispossessing of the actual tiller of the soil and owner farming is getting converted into tenant farming.

Thus Meghalaya has continued to be a non-cadastral State, with no land records at all. Efforts made in the early 1980s to prepare land records met with stiff resistance from the people, even the poor. The elite are able to whip up tribal sentiments against government, and although government clarified that it had no intentions of imposing land tax on the surveyed land, people were reluctant to allow government enter and disrupt their community cohesiveness. The poor are not organized, they are tied up in social relations to the elite of their clan, and to them large landowners are greater benefactors than a remote, heartless and corrupt government. Even when survey would have benefited the poor, they chose to support the clan leaders in opposing preparation of land records.

Poor capacity to spend funds - Though the ADCs have constitutional status with certain amount of autonomy in dealing with subjects, they are not backed by adequate funding arrangement. This has made these Councils ineffective in dealing

with the allocated subjects resulting in discontentment. The Central Government has been trying to address these issues by providing *ad-hoc* grants to the Councils under special packages or by earmarking funds in the Plan allocations of the State. However, due to poor spending capacity of the Councils, as well as of the state governments, overall expenditure remains poor. For instance, at least 10% of the Central Ministries Budget is earmarked for the development of North Eastern States, and unspent balance is transferred to a non-lapsable pool. However, in actual practice, releases against the total available funds in the pool are not satisfactory. The states are not able to send good proposals to the administrative Ministry, or are not able to spend well with the result that outcomes are not satisfactory.

Similarly many external projects are languishing for want of completion of various formalities (land acquisition, environmental clearance, etc), leading to poor overall expenditure in those projects. Non-submission of Utilisation Certificates, non-submission of project details/action plan, delay in holding State level sanctioning committee meetings, etc. are the general reasons for low release of funds. Utilisation of funds requires not only timely releases to the field officials, but needs taking a large number of steps simultaneously: posts have to be sanctioned, material needs to be procured and transported, for which the procurement and tendering process needs to be completed in time. One of the major reasons for low release of NREGA funds in states like Manipur and Nagaland is difficulty in online submission of data at the district level due to poor network.

Activate Planning Departments - Such delays can be avoided and procedures completed expeditiously if the state governments strengthen their Planning Departments. The hard reality is that state planning departments have poor capacity to prepare good proposals for external aid or even for getting more funds from GOI, and thus lose out on external or central assistance.

An energised Planning Department would keep in view the needs and aspirations of the tribals and within the broad framework of the long term development strategies and priorities envisaged for the State, the Department would formulate Annual and long term Plans, undertake regular monitoring and review of the implementation of Plan Programmes, and effect necessary adjustments in the Plans both in terms of physical content and resource allocation so as to ensure optimum realization of the Plan Objectives.

Other systemic issues – Not only tribal regions, but the entire North-East Region with the exception of Sikkim is characterized by low per-capita income, lack of private investment, low capital formation, inadequate infrastructure facilities, geographical isolation and communication bottlenecks. The region is primarily disadvantaged on account of connectivity, viz., road, rail and air connectivity. Power is a big constraint; micro-hydel power and other resources of renewable energy need to be explored in the region. Its own tax collection and internal resources are quite meagre rendering the region totally dependent on central devolution. Local tribal elite prefer to invest in landed property and shy from risky ventures.

In addition to stepping up overall investment by GOI, states must also improve governance and delivery. With too many Group C and D government staff, the non-plan expenditure of NE states is quite high and internal revenues low, with the result that these states end up with having insufficient funds for plan expenditure, despite liberal central devolution. For instance, Assam's per capita plan outlay for 2014-15 was Rs 5,775, whereas with similar poor population Chhattisgarh's per capita plan outlay was Rs 12,807.

Besides, these states must improve monitoring of outcomes and hold government staff accountable for results. Often government staff gets away with inflated reports to conceal their shortcomings. Thus according to the state governments the percentage of severely malnourished children in the north-eastern states is much less than 1%, whereas a survey done by UNICEF has reported a much higher figure varying from 3.5% in Manipur to almost 16% in Meghalaya and Tripura. There is urgent need to reconcile the two sets of figures. Process reforms are needed so that field data is authentic, reliable and tallies with the evaluated data.

To significantly reduce, let alone eliminate within the next decade or so, the growing gap between growth rates in the country and the tribal pockets of North East India calls for a massive improvement in delivery and governance, and not only increase in the flow of financial resources to the Region. It is no longer the availability of financial resources but the capacity of institutions and individuals in the North East to make effective use of available resources that is proving the critical constraint to growth. Institution-building calls for strengthening State departments and agencies, as well as promoting fruitful partnerships between civil society and State Governments. Strengthening of institutions of local self-government is particularly important.

9 SHIFTING CULTIVATION

For the tribal peoples, their land means livelihood; their culture and identity is built upon it. In interior areas where communications are not developed and where sufficient land suitable for terracing is not available, shifting cultivation (called *jhum* in the NE and *podu* in Orissa and Andhra) is the only system of cultivation which can be operated at the present stage of development, where tribals have no access to credit or extension. It is a practical way out from the inherent difficulties confronted in preparing a proper seedbed in steep slopes. Shortening of cycle has taken place for a variety of reasons, such as tribal land being taken over by dominant peasantry as a result of which tribals are pushed or they themselves withdraw to more interior/higher (altitudes) areas which are generally more inhospitable.

The problem is that shifting cultivation is more frequently compared with forestry activities or even natural forests rather than with other farming systems. It is unrealistic to expect shifting cultivation to be as benign as natural forest - it is a farming system, which makes use of forests and should be considered as such.

What's most important about *jhum* cultivation is that it protects and supports collective ownership of natural resources, so also preventing land from being privatised. Encouraging 'settled agriculture' in its place — the endeavour of current government policies — would only hasten the end of community ownership. The current policy fails to recognise that the land left fallow is actually part of the whole *jhum* cycle and needs to be protected as *jhum* land. All state governments classify *jhum* or *podu* lands as 'degraded forest and therefore settling them in favour of tribals will attract the restrictions imposed by the Forest Conservation Act. Even FRA is not being applied to such land, as occupation is not continuous.

Shifting cultivators often have poor access to agro-chemicals because of poverty, inadequate extension systems and a general disregard of their farming practices by authorities. Moreover, such areas are remote from markets, and forcing cash crops on the tribals may lead to their greater dependence and exploitation by traders and middlemen. At present, yields of staple crops such as rice, maize, or cassava, are often quite low, but many other plants are intercropped in the swidden fields and collected from the secondary forest, making overall productivity much higher. Therefore tribal perspective on their farming system and its cultural implications must be kept in view before making sweeping recommendations against traditional practices.

9.1 Securing communal tenures in the North East

Although technically communities own large chunks of land in the NE, there have been no surveys of the lands or codification of customary rights and practices or enabling people to interface with modern systems with such tenurial arrangements. For example, people owning land communally are unable to use it as collateral for getting bank loans. Most of the same land is also classified as 'unclassed state forest' with the FDs attempting to gobble that up (what they couldn't do via the IFA in the NE). There is serious conflict in Arunachal Pradesh due to such efforts. In the absence of a communal land recording system, revenue departments are using mainland procedures for happily allotting such lands to private parties. Due to the classification of *jhum* lands as 'forests', it is MOEF which gives clearance for their diversion to other uses instead of the land owning communities. When industry buys such lands it pays to MOEF instead of the money going to the legal landowning communities!

There are still excellent functioning systems of *jhum* cultivation. Massive damage has been done to such sustainable systems by promoting all kinds of unsustainable practices on them such as pineapple cultivation and rubber plantations. *Jhuming* is an integral part of social organisation and has sophisticated notions of equity built into it (there is no landlessness in functioning *jhum* systems as every year land is allotted on the basis of mouths to be fed rather than wealth or status).

Most attention related to tribal land has been focused on preventing alienation of private land to non-tribals. But most adivasi livelihood systems (as in the hills also) depend on access to common lands and some systems are rooted in communal

property rights/use. Shifting cultivators and pre-agricultural communities have effectively been left floating in the air as even during forest settlements in the mainland, either shifting cultivation was declared a concession which was later withdrawn leaving the people with nothing, or an attempt was made to simply wish the practice away without working out what happens to the people involved. In Orissa, there must be lakhs of shifting cultivators on whose limited rotational cultivation lands left, the forest dept keeps trying to plant teak or other trees without assuming any responsibility for assuring them alternative livelihoods. The result is that the people keep uprooting or burning the plantations on their lands and the FD staff keeps extracting fines and bribes from them. Many are forced to migrate in search of new options. The rights of pre-agricultural communities like the Chenchus, pahari korwas, bhuinas, etc have similarly been extinguished leaving many such communities on the verge of extinction after declaring their lands as PAs. There is little scientific evidence to support the premise that their resource-use patterns are inimical to biodiversity conservation. In 1942, the present Srisaillam Tiger reserve in AP was declared a 'Chenchu reserve' to protect the Chenchus and their lifestyle. Later it was declared a 'tiger reserve' with efforts to move the Chenchus out. This didn't succeed but now the presence of Chenchus in their ancestral land is 'illegal' and both the Chenchus and the tigers are more vulnerable than ever before!

Although a majority of Scheduled Tribes have land, and cultivation is their main occupation, water for agriculture is the greatest impediment in production. Micro watershed development program with people-centered participatory approach is a good method for poverty reduction through natural resource management in tribal regions. Therefore, micro watershed should be given top-most priority in tribal areas to enhance agricultural productivity.

10 PARTICULARLY VULNERABLE TRIBES (PVTs)

The Primitive Tribal Groups (PTGs), now termed as the Particularly Vulnerable Tribal Groups (PVT) are the worst off amongst the Scheduled Tribes. Their characteristics are: (a) pre-agricultural level of technology; (b) very low level of literacy; and (c) declining or stagnant population. Notified for the first time in 1975-1976 and then again in 1993, the number of PVTs has increased over time from 52 to 75, not because new groups were suddenly found to exist, but because more groups became eligible to be considered as PVTs as they met the portentous third criteria due to many starvation deaths in their midst.

The Ministry of Tribal Affairs should make the following commitments for them:

- To boost PVTs' social image, their being stigmatized as 'primitive' should be halted.
- Efforts shall be made to bring them on par with other Scheduled Tribes in a definite time frame. Developmental efforts should be tribe-specific and suit the local environment.
- Effective preventive and curative health systems should be introduced.

- PVTs' traditional methods of prevention and cure should be examined and validated.
- To combat the low level of literacy among PVTs, area and need specific education coupled with skill upgradation should be given priority.
- Formal schooling should be strengthened by taking advantage of 'Sarva Shiksha Abhiyan'. Trained tribal youth should be inducted as teachers.
- Teaching should be in tribals' mother tongue/dialect.
- Considering PVTs' poverty, school-going children should be provided incentives.
- Emphasis should be on laid on vocational education and training.
- PVTs should enjoy the 'right to land'. Any form of land alienation should be prevented and landless PVTs given priority in land assignment.
- Public distribution system (PDS) should be introduced to ensure regular food supply. Grain banks should be established to ensure food availability during crises.
- PVTs' participation in managing forests should be ensured to meet their economic needs and nourish their emotional attachment to forests.

11 GOVERNANCE

Apart from policy failures listed above, tribals have also suffered because of the poor quality of governance. It must be admitted that without improving governance in the tribal districts, neither alienated land will be restored to them nor other policies suggested in this note will get implemented. Programme delivery has deteriorated everywhere in India, but more so in tribal areas, where government servants are reluctant to work, and are mostly absent from their official duties. Government seems to have surrendered to political pressures from the staff, as many of their posts have now been officially transferred from tribal regions to non-tribal regions, where they can draw their salaries without doing any work! It is a pity that massive vacancies exist in tribal regions in the face of acute educated unemployment in the country.

Poor implementation of existing schemes in the tribal regions has meant that not only poverty continues at an exceptionally high levels in these regions, but the decline in poverty has been much slower here than in the entire country.

Bogus reporting is another serious problem in tribal districts. According to V Ramani (2019), who was a former Director General of Maharashtra's Nutrition Mission, the ICDS machinery (not just in Maharashtra, but in all States) tends to underreport underweight numbers, because of lack of emphasis on accurate growth monitoring, as also to avoid criticism. The fairly widespread prevalence of under-reporting of malnutrition rates in ICDS MPRs is confirmed by a comparison of the figures for the

same period of percentages of underweight children drawn from the NFHS-4 data and from the Maharashtra ICDS MPR.

Table 8: Maharashtra –Variations in Moderately and severely underweight Under-5 children between evaluated and reported data (%)

District	As per NFHS-4 2015-16	As per ICDS MPR June 2015
Buldhana	41.30	9.16
Chandrapur	40.30	15.12
Dhule	47.50	11.47
Gadchiroli	42.10	20.18
Gondia	40.10	7.49
Jalna	43.60	7.41
Nandurbar	55.40	31.30
Nashik	42.90	10.25
Osmanabad	44.50	8.54
Parbhani	42.30	6.94
Washim	42.90	6.28
Yavatmal	49.10	9.09

This kind of reporting defeats the very purpose of data collection. The state government employees are able to escape from any sense of accountability, if the trend of bogus¹⁴ reporting continues.

In a recent article in the WIRE (20 March 2019), Sukanya Shantha reported that toilets were built for all 50 houses in Kursel village in Kanker district (Chhattisgarh), and the village was declared open defecation free (ODF). However all houses in the village have converted their toilet into a storeroom, or simply abandoned it. Lying unused since they were built, the concrete cement structures, in most cases, have detached from the sewage pipes. While the district administration has built the bare structures, other essential facilities like running water in the toilet taps are still missing. In many cases, the toilet doors have fallen off their hinges.

11.1 Role of the Ministry

It is unfortunate that the Ministry of Tribal Affairs (MOTA) does not give sufficient attention to the important problems of the tribals on the plea that many of these subjects such as land alienation, displacement, forest policy, and PESA have not been allotted to it. Even then the Ministry should play a more activist role in addressing these issues by pursuing with the concerned ministries, where often tribal concerns are neglected. An effective monitoring mechanism should be set up to bring out the

¹⁴ When this was pointed out to the state government in a workshop, a senior Secretary said, 'Sir, do not call it bogus data. These are advance estimates that we will achieve after 20 years, but our field officials are so fond of the programme that they report it just now, 20 years before time!'

dismal picture of tribal areas that would put pressure on the sectoral ministries and the states to improve their programmes and implementation.

When MOTA was set up in 2001, it was expected that it would take a holistic view of tribal problems and coordinate the activities of all other ministries that deal with the subjects impinging on tribal livelihoods. The new ministry, however, took a minimalist view of its responsibility and reduced itself to dealing with only such schemes (such as distribution of scholarships and grants to NGOs) for which budget is provided. Such an ostrich-like attitude defeats the purpose for which the ministry was created.

MOTA does not even monitor whether the basic services in education, health or nutrition are reaching the tribal hamlets. The Ministry should develop meaningful partnerships with advocacy organizations that could produce credible and evidence-based reports with a view to engage with other ministries that oversee various programmes such as ICDS, NHM, PDS, etc in a way that such programmes reach the Adivasis. Even in areas where there is Naxalite presence in very remote and apparently inaccessible areas, civil society organizations can be funded to run mobile clinics and feeding centers. Clearly, it is a lack of will on the part of administration that needs to be set right first.

A GOI team on NHM in 2011 visiting Jhabua, a tribal district of Madhya Pradesh, observed that a large number of vacancies existed among specialists (38 against 52 sanctioned); medical officers (23 against 41 sanctioned); staff nurses (59 against 106 sanctioned) and ANMs (141 against 380 sanctioned). Perhaps inability of the district management to recruit contractual staff due to 'Roster for SC/ST' was a contributory factor.

In a study by UNICEF of Jharkhand it was revealed that one of the main constraints that NHM in the State faces is that of lack of skilled manpower. In the two districts visited in 2009, Sahibganj had less than 50% positions in place, while that of East Singhbhum, with its better infrastructure, it was just around 54%. Other major reasons as identified during this study for low utilisation appeared more due to lack of systemic controls, such as lack of monitoring, and lack of understanding among the staff on implementation of rules.

In Sahebganj district, even several CDPOs are not in position, against a sanctioned post of 7; only 3 positions are in place. In such situation one person has charge of more than one CDPO, or the BDO gets additional charge. Obviously in such situations one of the supervisor ends up doing most of the work that a CDPO is required to do, thus overall supervision further suffers.

The situation of fund flow to tribal districts is so inefficient that only 18 per cent of the village level staff in Jharkhand is able to get their salaries in time.

The isolation of most of the scheduled tribes calls for special attention from the state governments to improve geographical targeting. Tribal villages and hamlets are often hilly and forested, making it difficult to reach them even in normal circumstances,

but more so during natural disasters and monsoons. Services have not reached into these areas, which are more sparsely settled than the standard population norms for health centres, schools, or roads. Service providers, such as doctors, do not reside in these areas and very often do not even visit them because of the difficulty of access.

Constitutional provisions aimed at protecting *adivasi* culture and interests have been mostly ineffective. Part X (Article 244) of the Constitution deals with the administration of scheduled areas and tribal areas, which covers the operation of the Vth Schedule. In practice, experience with the Vth Schedule has been disappointing. Tribal Advisory Councils hardly have any teeth, laws applicable to the rest of the state are routinely extended to scheduled areas, the governor rarely exercises the powers vested in him or her, and the overall result manifests in the miserable human development indicators for *adivasis*.

While it is easy to talk of long tenures and posting officers with commitment in the tribal regions, the reality is that postings are done by the state governments who generally succumb to pressures from the officials who wish to move out of tribal blocks on one pretext or the other. The only way to combat political compulsions and opportunism, and promote good governance is by prescribing hard punishment in terms of loss of central funds for those states who do not follow prescribed norms. In addition we suggest that the Ministry of Tribal Affairs should link devolution of its plan funds with performance. However, as repeatedly stressed in this paper, the prerequisite for achieving this would be a good system of monitoring which will capture the performance of the states on key indicators. In addition, one would have to think of innovative solutions, such as empowering tribal *panchayats* to hire staff on contract, Mobile Health Services, and compulsory tenure in tribal regions before confirmation of government staff, to improve programme delivery.

Serving in the rural areas for a period of 10 years with five years exclusively in Tribal Sub-Plan (TSP) areas must be made mandatory for all government doctors. All the vacancies of medical staff in the TSP areas need to be filled up within a specified time frame. The government may consider additional benefits to medical staff working in TSP area and concomitant budgetary allocations need to be made under the TSP.

Effective mechanisms need to be devised to ensure that all allocations for tribal areas actually reach the people. Increasing allocations will have little impact unless the present systems of looting are smashed. Direct transfer of funds and PDS supplies to gram sabhas is required but that runs into resistance from state governments. Similarly, either local people should be recruited as teachers and health workers or incentives provided to staff from outside to actually stay in the areas and do their work. For that, the availability of basic facilities like electricity, health centres and schools simply has to be improved. In the Satkosia wildlife sanctuary (district Angul, Orissa) visited by Ms Sarin in January 2008, none of the 92 villages with a population of over 30,000 living inside had any electricity, few schools had teachers or the PHCs any health staff. The worst was that the PA staff harassed traders and others delivering construction and other essential material to the villagers while

entering the area. Which outsider with a family and kids would be willing to work in such an area no matter how effective the monitoring is?

It is not fortuitous that overwhelmingly large sections of bureaucracy/technocracy constituting the delivery system come from landowning dominant castes or well to do middle classes, with their attachment to ownership of property, cultural superiority, purity-pollution governed behaviour and a state of mind which rationalizes and asserts their existing position of dominance in relation to others. This influences their attitudes, behaviour and performance. As it happens, the politics has also been aligned with this social segment which constitutes the power structure in rural and urban areas since colonial times. It is this coalition of interests and social background that deeply affect governance at all levels (Planning Commission 2008).

There is a distinct feeling both within government institutions and outside that reports of National Commissions for SCs/STs do not carry any weight. Parliament finds no time to discuss them. Government has shown little seriousness in making meaningful use of them and initiating corrective measures. The Commissions are also not being effectively used as instruments for grievance investigation and redressal mechanism where official agencies have failed or faulted. The Commissions are primarily used to provide symbolic representation to members of the SC/ST communities to deflect political criticism about neglect of these groups. The Commissions have considerable potential in bringing to the notice of government the simmering discontent of the communities, and giving them a voice where bureaucratic and political structures have failed to respond. But they need to be restructured and strengthened to command attention from official agencies for discharging this responsibility.

The area affected by extremist movement is the region of central India with concentration of tribal population, hilly topography and undulating terrain. The area has much less density of population than the plains. The failure to provide infrastructure and services as per national norms is one of the many discriminatory manifestations of Governance here. These disparities result in non-available/poorly provided services. The removal of these disparities should be among the top priorities to convince people living in these areas that they are equal citizens and that they matter in national life.

A mechanism should be set up at the state level to periodically review cases in which STs are involved, recommend withdrawal of cases in petty offences, release of under trials on bail where they are unable to find a bailer, arrange effective legal aid to defend them in other cases, and issue directions for speedy trial in cases pending for long.

Niti Aayog must start forthwith an annual review of the state of administration in the Scheduled Areas in terms of its responsibility under the first proviso to Article 275(1), with a clear goal to raise it to the level obtaining in the rest of the State within a period of five years.

With a view to improve governance and delivery in tribal districts, a quantifiable annual index should be constructed for the districts as well as the entire state, on the basis of certain agreed indicators such as land restored to tribals, policy changes by state governments to empower gram sabhas in scheduled areas, restoring control and access of tribals over forests and natural resources, infant mortality rate, extent of immunisation, literacy rate for women, feeding programmes for children, availability of safe drinking water, electrification of rural households, percentage of villages not connected by all weather roads, and so on. Central transfers to the states both under Article 275(1) of the Constitution should be linked to such an index. Once these figures are publicized the states will get into a competitive mode towards improving their performance, which alone will attract more central funds.

11.2 A few suggestions on administration

- All States having Scheduled Areas should have Integrated Tribal Welfare Agencies or their equivalents and 30% of the revenue from excise and any other form of income should be allocated to these agencies.
- A periodic and independent review of tribal administration at the national, state and district/ITDA levels should be taken up.
- Officers posted in the tribal areas (IAS, IPS, IFS) should have a strong understanding, orientation and empathy to tribal rights and culture.
- The tenure of the officers should be fixed for at least a minimum period of 3 years so as to give consistency to the programmes/action initiated during their respective tenures.
- Awareness and sympathy of police department on understanding tribal problems, on taking action against atrocities on tribals, the laws relevant (SC/ST prevention of Atrocities Act and others), is poor. There is a growing violence against tribals especially State induced violence in the name of maintaining law and order. This should be curbed and police harassment on tribals should be stopped. Police should not refuse to register cases filed by tribals on any atrocities against them.
- Primary Education and Health should not be privatized or handed over to private institutions particularly in the tribal areas, as it is the primary responsibility of the State and a Fundamental Right of all citizens.
- Every tribal village should have a primary school and government cannot refuse to set up schools in any tribal village with at least 30 households on grounds of lack of funds or any other.
- The Plan allocation in Central and State Budgets for Tribal Welfare and especially for education and health shows very poor percentages. This if increased even by 10-20 percent will be able to bring great changes to the prioritization of budget allocations.

- Electricity should be provided in each and every village and hamlet especially in those village affected by electricity projects.
- The officers of the Tribal Affairs Department should be represented/be part of the policy formation process/protocols of all other departments of the Government (State and Central).

11.3 Migration

Migration is common to almost all tribes, but it is the highest in Maharashtra, Gujarat, Chhattisgarh and Jharkhand. In Nandurbar and Dhule districts of Maharashtra, for example, due to high indebtedness over 30 per cent of the tribal population migrate between the months of August and March to work on sugarcane fields in neighbouring Gujarat, despite owning, on an average, three to five acres of land. The landholding pattern in Jharkhand, however, differs from that in Maharashtra. Landlessness is high and land is distributed unevenly. But unlike Maharashtra, it has had a history of tribal struggles and has therefore a strong civil movement. Clearly, then, the particularities of each region will have to be taken into account if we are to develop a working plan for these areas.

Often such families after migration have no ration card in the cities, where they work for several months. The labour laws governing migrant labour are poorly implemented, as there is little knowledge about such laws, and no legal aid is available to help the tribals. A research study on 'Migrant Tribal Women Girls in Ten Cities' for the Planning Commission (2010) found that the employers paid very low wages below the level of minimum wages, made illegal deductions, and forced them to work for very long hours beyond the hours fixed by law. The principal causes of financial and sexual exploitation of the migrant tribal women and girls in cities were poverty, lack of employment opportunities, unorganised nature of labour force, misunderstanding of the local people about free sex amongst tribal societies, and lack of community support to victims of sexual exploitation.

It is hoped that MOTTA in consultation with the Ministry of Labour will ensure that migrant tribal labour is not exploited.

11.4 Role of the Governor

Clause 3 of the Fifth Schedule and Article 244 of the Constitution of India make it mandatory for the Governor of each State having Scheduled Areas to submit a report regarding the administration of such areas to the President of India annually or whenever so required by the President. The eighth report of the Joint Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (2000-2001) on the working of Integrated Tribal Development Projects in Madhya Pradesh informed that the report for the year 1992-93 was despatched by the Secretariat of the Governor of Madhya Pradesh on 9 July 1996 but it was still under examination in the Ministry of Tribal Affairs by 2000! The Joint Parliamentary Committee further stated that:

‘it is more painful to note that this report highlights only the achievements of the State Government in tribal development. The in-depth analysis of the solution to the problems of Scheduled Areas is not included in the reports. The Committee desire that the Union Government, who has the power to give directions to the states in regard to the administration of Scheduled Areas, should ensure that the Governors’ Reports by the States are submitted to the President of India, within the stipulated time. They also desire that analytical solutions to the problems of the Scheduled Areas should also form a part of the Report so as to make Governors Report a useful document.’

The track record of the Tribal Advisory Councils (TACs) across India has been dismal. The TACs are seldom constituted by the State governments. When they are constituted, they seldom meet, as their meeting depends on the wishes of the concerned bureaucrats in the Departments.

The Tribal Advisory Council of Rajasthan met only once in a year during 1996, 1997, 1998 and 2000. According to the Rajasthan government “more meetings of TAC could not be organised due to preoccupation of the Chairman and Members”. The Madhya Pradesh government gave the ridiculous reasoning to the Joint Parliamentary Committee that the TAC meetings could not be held on regular intervals as “issues for Tribal Advisory Council were limited”.

The Bhuria Committee¹⁵ was very critical of the functioning of the Governor with respect to the protection of the rights of tribals. The Report said that the Governor’s reports were like modified versions of the annual reports of the departments of tribal development. They were stereotyped and routinized and there was no discussion on the problems faced by tribals by large-scale displacement due to land alienation, political problems, insurgency and so on.¹⁶ The failure of the Governors to submit reports about the actual situation of indigenous and tribal peoples and non-functioning of the TAC meant that the Fifth Schedule commitments remained on paper only.

11.5 Grants-in-Aid

The Special Central Assistance (SCA) was conceptualized to provide an added thrust to the Tribal Sub-Plan¹⁷ (TSP) in order to accelerate socio-economic development of the Scheduled Tribes. The three most underlined objectives of the Special Central Assistance (SCA) for the Scheduled Tribe Sub-Plan (TSP) are to:

¹⁵ Report of MPs and Experts to make recommendations on the salient features of the law for extending provisions of the Constitution (73rd) Amendment Act, 1992 to scheduled areas, 1994, p.14. Accessible at http://www.odi.org.uk/projects/00-03-livelihood-options/forum/sched-areas/about/bhuria_report.htm.

¹⁶ GoI (2004): Report of the Scheduled Areas and Scheduled Tribes Commission, Vol. I, 2002-04, Government of India, New Delhi, p.39

¹⁷ TSP (Tribal Sub-Plan) after merger of Plan and Non-Plan in 2017 is referred as Tribal Sub-Scheme. However, post this merger, the base from which the earmarking was to be done was lost and a revised formula for earmarking funds under the TSP was not formulated.

- to make use of the SCA as an additive to their Scheduled Tribe Sub Plan (TSP);
- to use the SCA as resources for filling the critical gaps and for providing missing vital inputs so that the schemes can be more meaningful; and
- it should be utilized in conjunction with TSP and other resources available from other sources like various Corporations, financial institution etc.

However evaluation by Planning Commission (2013) revealed that the very supplementary character of the assistance is disregarded in most of the States where the research study was carried out. The SCA to TSP in most States is utilized towards providing subsidy to bank-linked income generating schemes, and are not related to the overall plan for STs. Critical gaps are not identified and the bank linked schemes are not linked and converged with the schemes planned under the TSP. In almost all States, the SCA is transferred to the State Scheduled Tribes Finance and Development Corporation(s) for providing subsidy to the bank-linked income generating schemes. In addition, the income generating schemes implemented by these Corporations are not, in any way, linked with the sectoral schemes being implemented by the State Governments under their Scheduled Castes Sub-Plan (SCSP) and Tribal Sub-Plan (TSP). The senior officers of these Corporations do not know as to what are the critical gaps in the various schemes that are being implemented under the sectoral schemes of the State's Scheduled Castes Sub-Plan (SCSP) and the Tribal Sub-Plan (TSP).

The present approach of SCA to TSP where 70% of the funds are to be spent on individual family oriented income generating schemes is overlapping with NRLM¹⁸ programmes. In the absence of any mechanism to prevent overlapping, we should implement family oriented income generating schemes only through NRLM type schemes. One should use the SCA to TSP for infrastructure development, strengthening administration and monitoring, and matters incidental thereto. If necessary, an amount of about 20% of the funds could be kept for Family Oriented Schemes to meet certain exigencies where it is considered essential.

11.6 NGO funding by the Ministry

It is pertinent to mention that a large number of schemes of the Ministry are being implemented by NGOs pertaining to education, health, income generating programmes, and vocational training. Hence it is important to ensure that only organisations with credibility and commitment are selected. There has been a mushroom growth of fake NGOs, who are able to corner funds from the Ministry and state governments through the back door. This must be checked through transparency, better monitoring, and grading of NGOs. The best option of course is to transfer this responsibility outside the Ministry so that the Ministry officials can concentrate on more pressing issues. If it cannot be done at one go, let a separate autonomous body be set up, and gradually the task be transferred to that body.

¹⁸ National Rural Livelihood Mission (NRLM) is a poverty alleviation project implemented by Ministry of Rural Development, Government of India. This scheme is focused on promoting self-employment and organization of rural poor.

Government's efforts to nurture and bring into its fold good NGOs have been constrained partly due to the ineffectiveness of the eligibility criteria to debar a number of so called NGOs, whose activities are more akin to fly-by-night operators, from getting assistance from Government. For getting grants from government the proposal must look good on paper, and anyone who can produce such papers cannot be denied grants, as government cannot work on subjective satisfaction of the Joint Secretary! Government procedures are such that it is generally the corrupt and mediocre NGO who can wade his way through the maze of procedures and grab government largesse. Government's intention of weeding out fake organisations and thus setting up a stricter procedure for screening acts like a self-fulfilling prophecy, as procedures deter self-respecting NGOs and reward manipulative ones. Weak monitoring mechanisms in government has prompted social climbers and manipulators (that includes defeated politicians and civil servants' wives) who use their extra-professional 'resources' to obtain grants from several Ministries/Departments of Government and spend it fast, with no commitment to sustainable development or poverty alleviation. Often the Ministry officials are pressurised by the politicians to give grants to fake and manipulative NGOs. The Ministry officials thus end up spending most of their time either resisting vested interests, or succumbing to such pressures, or sometimes even sharing the loot! A very large number of organizations funded by the Ministry of Tribal Affairs are such who are basically promoting themselves rather than helping the adivasis.

Another reason for proliferation of bogus organisations¹⁹ is the government's emphasis on fulfilment of targets and fund utilisation, which shifts the focus from the important task of supporting exclusively good and grassroots NGOs to funding as many projects and NGOs as possible. Some Ministries do have a system of sending NGO applications for pre-funding appraisal to monitors, but they are low paid consultants (often appointed on patronage considerations) whose intentions are not always honourable. Even non-existent NGOs could thus get funding from Government, if it could manipulate a favourable report from the monitor. When Ministers find NGOs pocketing government funds they do not plug the loopholes but encourage their own supporters to join the loot. Bureaucratic reaction is to prescribe more formats and tighter procedure which deters good NGOs but crooks can always find their way through by bribing at all levels, and thus a vicious cycle is established.

Moreover, even where the NGOs were genuine, Government is not able to effectively monitor the large number of sanctioned projects, draw appropriate lessons regarding technology, reasons for success or otherwise and thus be able to guide the other NGOs wanting to intervene in that sector. The blind emphasis on fund utilisation played havoc with the quality of projects.

A third factor for the reluctance of good NGOs in applying for Government's support is the availability of Government's assistance to strait jacketed Government schemes only and keeping innovative proposals (i.e. those which do not fall within the

¹⁹ It is interesting that there are a large number of studies on good NGOs, but not a single one on fake NGOs.

framework of strait jacketed Government's schemes) outside consideration. Fourthly, Government has not played a pro-active role in establishing partnership with committed NGOs and has generally confined its attention to only those who apply for funds to its office. It has on its own not requested good NGOs to come to its fold and begin a relationship. Finally Government subjects all proposals including those from good NGOs to a uniform appraisal procedure inhibiting sensitive or well-established NGOs or those engaged in social activism from approaching Government.

Unlike Government which seeks satisfaction on paper before sanctioning grants, the donor agencies (such as Ford) follow an entirely different approach. There are a series of meetings held with the prospective recipients. The Programme Officers or well paid consultants (whose integrity cannot be questioned) visit the NGO and see for themselves the past work done by the voluntary organisation. This procedure of aiming at subjective satisfaction of the Program Officer may increase overheads but it screens out the bogus societies, and reduces the scope of fraudulent practices. Since the number of grants that the donors make is limited, it is possible to ensure quality and reduce the risk of grant going to a bogus organisation.

It must be recognized that improvement in governance would take place only when countervailing forces in society develop confidence and autonomy to oppose inefficiency and corruption in government. Therefore in addition to promoting genuine organizations, the Home Ministry should relax FCRA provisions so that NGOs have access to independent funding.

According to a large number of NGOs the FCRA is a major impediment for the voluntary sector. Getting registration is difficult and as a result a lot of very deserving and small NGOs are not able to access foreign funds. The premium on getting FCRA is such that it has led to corrupt practices. It has also resulted in NGOs obliging NGOs who do not have FCRA number, although it is not permitted under law. This would not be a problem if quality funding from Indian sources were available to the sector for long term institution building work and strengthening of civil society at the grass root level. For the private commercial sector there is a friendly and liberalised regime while for the important issues of development connected with the poor and deprived sections of society there are restrictions that are inconsistent with the spirit of democracy and pluralism.

Given the relatively low levels of human capital in certain states in India, NGO's and other groups will also have to play a leading role in mobilizing pressure to empower citizens in a fashion similar to the work of MKSS in Rajasthan to improve access to information and combat corruption at the local level. Without citizen participation and involvement, there is always the risk that even the most carefully crafted reforms might eventually run out of steam and stall altogether. However, the experience of CAPART and the Ministries of Social Justice & Empowerment and Tribal Affairs shows that government looks upon giving of grants to NGOs as a source of patronage at its best, and a source of commissions at its worst. Government has thus corrupted the NGO sector or encouraged crooks to float NGOs, and thus given the entire sector a bad name.

Since it is not possible to change the work culture of the Ministries and Departments dealing with the NGOs, I suggest that GoI make a direct contribution of, say, 100 crores to the recognised trusts, such as NFI, Ratan Tata Trust, Development Alternatives, Oxfam, Action aid, who should be dealing with grassroots NGOs, without the direct intervention of government officials in sanction of grants. The Trust could have government officials on its Board to safeguard the interest of the public money.

11.7 Naxalism & Tribal leadership

Adivasis are unable to put democratic pressure on the bureaucratic and political system, from which they were historically protected as the result of their relative isolation. The oppressed tribals, unlike other disadvantaged groups, generally suffer and endure their exploitation silently.

In some areas, however, they respond occasionally with anger and assertion, go underground, get attracted to naxals, and have taken to armed insurgency. Unfortunately for them, Indian history of the last 150 years shows that terrorism and violent insurgency have never succeeded in achieving their aims (creation of Mizoram may be the only exception), but over ground agitational strategies have been most successful, leading to creation of new states, and changes in government policy (such as declaration of emergency in 1975 due to JP movement). Arvind Kejriwal is the latest example of success in agitational politics.

The middle path of agitational politics by organizing bundhs, taking out processions, and putting pressure on the politicians, so successfully adopted by other groups in India to articulate their grievances, is alien to the tribals and has historically been unknown to them. A few civil servants, such as BD Sharma and SR Sankaran tried to articulate their conditions, but such efforts could not be sustained for lack of institutional support. Civil society needs to play a big role here, and government too should not brand all tribal activists as Maoists.

What about Naxals? Though in a few exceptional cases Naxals have been able to improve tribal livelihoods, such as *adivasis* getting minimum wages for the *tendu* leaf gatherers in Andhra Pradesh, by and large Naxals have degenerated into a terrorist outfit with little impact on the day-to-day agony of the local population. In the 70's and early 80's the naxalite movement may have had ideological base, today they are just brigands. The poor tribals are often subjected to physical violence by both Maoists and state forces, they even get deprived of educational and health facilities or access to PDS on the ground that the area has become unapproachable for normal "development" efforts of administration.

It is important to state that Naxal movement is based on violence. From a moral point of view, violence is unacceptable whether inflicted by the state or Maoists. Moreover, the Maoists kill people who they believe are police informers and mete out punishments through kangaroo courts. They function as prosecutor, judge and executioner all rolled into one. These kinds of behaviour are profoundly undemocratic and cannot be justified by pointing to State violence.

In Chhattisgarh as elsewhere, *adivasis* are trapped between vigilante groups set up by the state, the state police and para-military forces on one hand, and the Maoists on the other. Both sides are using violence and the *adivasis* are the ones who are mainly at the receiving end of this violence.

The Salwa Judum, touted by the government as a ‘spontaneous people’s movement’ and a ‘peace mission’ was in fact a vigilante group set up by the state government.²⁰ It was as Guha pointed out, the “outsourcing” of law and order by the state.²¹

Salwa Judum was disbanded after a Supreme Court order. However, much of the literature on *adivasis* in Chhattisgarh and other states document the atrocities perpetuated by the state-sponsored Salwa Judum. Between the Salwa Judum and the state government, and the fear of Maoists, several thousand *adivasis* have fled from their villages and moved to Andhra Pradesh.

Although there are some activist organisations who speak for the tribals openly through the social media and do advocacy to stop their exploitation, their number and effectiveness is limited. They have neither been able to reduce the lack of trust between the people and the State, nor improve governance in the tribal belts. We need more democratic, well informed, and over ground grassroots organizations for effective advocacy both in policy and implementation. The poor *adivasis* are today trapped between the Maoists on one hand and the armed forces on the other. Mere sympathy for the Naxals is self-defeating as the path of underground violence is not the answer for tribal problems and will not end tribal oppression.

Genuine grassroots organisations and tribals themselves must learn from the likes of Shiv Sena and Kejriwal the strategy of agitational politics.

To deal with Left Wing Extremism, the Government has approved National Policy and Action Plan in 2015 which contain a multi-pronged approach envisaging security related interventions, developmental measures, ensuring rights and entitlements of the local communities etc. A number of significant initiatives have been taken on the developmental front in the LWE affected States, including Chhattisgarh, for road connectivity, skill development, installation of mobile towers, financial inclusion and education etc.

A new Scheme, namely ‘Special Central Assistance for the most LWE affected districts’ has been launched in 2017-18 for filling up the critical gaps in Public Infrastructure and Services with an outlay of Rs. 3000 crore @ Rs. 1000 crore per

²⁰ Balagopal, K. (2006) “Physiognomy of Violence”, *Economic and Political Weekly*, vol. 41, no. 22, p.2185 & Balagopal, K. (2007) “Land Unrest in Andhra Pradesh-III: Illegal Acquisition in Tribal Areas” *Economic and Political Weekly*, vol. 42, no. 40, pp. 4029–4034. See also the editorial, “Widening Debate on the Naxalite Movement (2008)”, *Economic and Political Weekly*, vol. 43, no. 19, pp. 5–6.

²¹Guha, Ramachandra (2007) “Adivasis, Naxalites and Indian Democracy.” *Economic and Political Weekly*, vol. 42, no. 32, p.3311. *JSTOR*, www.jstor.org/stable/4419895

annum. Under this Scheme, 8 district of Chhattisgarh are included and an amount of Rs. 200 crore has been released to Chhattisgarh for these districts till now²².

12 SUMMING UP

To sum up, the socio-economic condition of the tribal people has remained dismal even after more than seven decades of independence, and despite the avowed intentions of the State to bring development to the tribal areas and make living conditions of the tribal people on par with the rest of the population. In terms of most standard developmental yardsticks— poverty, inequality, access to land and other assets, access to health and education—the tribal people come across as the most vulnerable population group. The force of development has actually often been a scourge to the tribal population, forcefully displacing them from their lands and dispossessing them of their access to common property resources and their livelihoods. This exclusionary and often rapacious development process has naturally increased their alienation from the mainstream (Oxfam 2016).

Thus darkness continues to prevail in the arena of tribal policy in India. Protective laws are rarely implemented, budgetary measures like the TSP strategy have failed to achieve genuine financial devolution, and educational strategies have been assimilative and destructive of the moorings of tribal culture. Light at the end of the tunnel can be seen only in sincere implementation of laws such as PESA and FRA that provide for self-governance by tribal communities. However, so far, the state has forgotten or subverted the interpretation of its own laws. The perils of the tribal identity and survival remain as real as ever²³.

²² Lok Sabha Unstarred Question No: 4488 answered ON: 08.01.2019

²³ https://issuu.com/saded.com.in/docs/tribal_policy-harsh_mandar

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NOTES

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