

Tribal: Victims of Development Projects

– India’s Forced Displacement Policy and Practice

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Introduction and Context

*"Large-scale displacement of tribals due to land acquisition for development is a challenge."
– Krishna Tirath, Women and Child Development Minister, May 2011*



The comment gravely testifies the fact that the tribal welfare laws such as the PESA 1996, the Forest Rights Act 2006 or even the Fifth Schedule of the Constitution have utterly failed to provide protection to the indigenous tribal communities of India.

Land alienation of tribals and of the poor section of the society, which recently again came to fore shortly before the UP assembly elections after the Bhatta-Parsaul incident of May, 2012 when farmers protesting over rate of compensation for their land taken for a road project in Greater Noida, clashed with the police, is a

cruel reality. It also points to the wider fact that the authorities and the governments have no clear policies to safeguard the interests of those who are uprooted from their lands – they are generally seen as siding the rich class.

In recent times the large scale industrialization, privatization and globalization for sake of “development” has emerged as the biggest threat to tribal’s survival – ironically, the so called “modern civilized society” has become a predator of their age-old eco-friendly, peaceful and harmonious lifestyle. The tribals, their lands, and other resources are now exposed to the exploitative market forces, mostly due to the State and Multi National Companies (MNCs) sponsored developmental projects to exploit minerals and other natural resources. Land alienation of the tribals by the powerful entities has become common phenomena. It is most unfortunate that “the freedom to live in their own traditional ways” as guaranteed by the constitution is flouted by those who understand the constitution better.

The state ownership of the tribal community land, called common property resources (CPR) land, (which the government owns and involves no compensation when taken over) provides a convenient entry point to project managers. In order to reduce the project cost, they deliberately choose the administratively neglected backward areas with high CPR component and where legal compensation for the private owned land is low. Bureaucrats are of course ever willing to serve the cause of the rich and powerful.

These so called “developmental” activities, which do not confer any direct benefit to the tribals, merely leave them landless and without means for survival. Monetary benefits do not really count when the lifestyle for generations is changed irreparably. ***Displacement from their traditional habitations leaves them under acute trauma and uncertainty – there is institution in India that is interested in alleviating indescribable human sufferings of the tribals left to struggle for survival with any dignity .***

Tribals: The Biggest Victims of “Development”

Tribals have paid the highest price of national development because their regions are resource rich: 90 percent of all coal and around 50 percent of the remaining minerals are in their regions. Also the forest, water and other sources abound in their habitat. The indigenous/ tribal peoples who constituted **8%** of the total population of India at 1991 census make up **55%** of the total displaced persons due to development projects up to 1990. According to the Ministry of Tribal Affairs (MTA) nearly 85 lakh tribals were displaced until 1990 on account of mega developmental projects like dams, mining, industries and conservation of forests etc. Lakhs of tribals have been displaced from 1990 onwards (due to the so-called economic liberalization policies of the Center under pressure from the Western lenders) without proper rehabilitation. Yet, no proper study has been conducted in regard to displacement and rehabilitation of tribals – who cares for voiceless poor tribals as long as corporate czars are happy?

Article 46 of the constitution places an obligation upon States to promote the interests of Scheduled Castes and Scheduled Tribes and protect them from social injustice and all forms of exploitation. It must be mentioned that displacement of tribals from their lands 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.

Lack of Long Term Foresight

It is the height of injustice that the tribals whose eco-friendly lifestyle preserved forest, mineral and natural resources for ages are now mercilessly uprooted by “outsiders” who would only make money from the resources for some time, creates few jobs mostly for urban middle class and then walk away with the booty only to look for another place to exploit. If all citizens are equal under Indian constitution, why then the helpless tribals are forced to pay the price with their traditional land and lifestyle? Does their peaceful and preserving co-existence with natural surroundings threaten the country in any way? What makes the exploitative corporates superior to poor tribals who have served as custodians of resources for centuries?

Unfortunately such questions don't interest the “people's representatives” sitting in the parliament or assemblies. Led by the finance ministers they are happy to support efforts to sustain the sacred GDP growth rate, after paying lip service to the well being of the poor and native tribals.

In recent years, West Bengal has seen huge anti-land acquisition movements in Singur and Nandigram while social activists have repeatedly been raising the issue of displacement of tribals due to mining and other activities in central India.



On 8 August 2008, the Supreme Court allowed POSCO India Pvt Ltd, a subsidiary of Korea-based POSCO, to build its Rs 51,000-crore steel plant in Paradeep in Jagatsinghpur district of Orissa. On the same day, the Supreme Court also allowed Sterlite India Limited, a subsidiary of Britain's Vedanta Resources Plc, to mine bauxite in Niyamgiri hills in Kalahandi district of Orissa considered sacred by Dongria Kondh tribe. The Supreme Court's order has undermined the tribal protests and encouraged further acquisition of lands of the tribals leading to their displacement without proper rehabilitation, destruction of their culture and posing threats to their survival in the name of development.

The state government has been backing the pro-POSCO activists to counter the movement by *POSCO Pratirodh Sangram Samiti*. Nothing surprising about that – it is an open secret.

An Austrian anthropologist, Haimendorf, had first studied some tribes in the 1940s. Then again he studied them in 1970 and asked "How do you explain the fact that their communities that were self-reliant thirty years ago today need State subsidies? Their women had a high status three decades ago. How have they lost it today?"

The Nasty Trap of Liberalization and Globalization



The so called economic liberalization, privatization, and globalization that was started 20 years by the current Prime Minister is clearly designed to further the interests of the urban areas and the rich corporations of the country as well from outside. Liberalization, in simple terms, only means allowing the rich corporate to exploit country's resources at rather easy terms unmindful of what happens to the environment and the displaced people who have historically acted as custodians of the lands and surroundings. Who says that the British exploitative policies ended after they left India in 1947?!

Over two decades ago, the West, former colonial powers, cleverly devised the strategies of

Globalization and WTO agreements to gain access to natural wealth situated in the remotest corners of the world – all through legal international agreements with governments! Now their giant companies (often bigger than the country they are eyeing) can reach anywhere and grab raw materials and feed the lifestyle of the West at the local people all around the world. And the beauty is: no one is in the position to complain once a government signs the agreement – which is a matter of push-pull, arm-twisting, kickbacks, and buying few legislators and officials, all away from the public knowledge.

The truth is: indigenous people across the globe are being alienated from their lands (and natural resources) and losing their traditional culture, knowledge and lifestyle. This is what happens when the money power rules the world; not the principles of human justice or equity.

Basic Origin of Current Economic Policies

Western lifestyle is based on the primitive belief that the more you consume (resources of the planet) the more advanced or developed you become!! While they treat people as robots making goods in the factories, from the natural raw materials, to be consumed by the society – the consumption (and hence production) must keep increasing year-by-year, else, stock markets crash making rich poor overnight. This fear keeps them consuming ever more year after year so that the economy (measured by an outdated GDP number) keeps expanding. Blinded by their technological superiority, they cease to respect nature or its resources that sustains them. The result is Global Warming and Climate Change disasters that are not enough to make them mend their ways of living. What is most dangerous for the well being of the planet is that people of rest of the world are also adopting their utterly wasteful lifestyle under the media blitz of commercials and are quitting their own local ways of living in harmony with nature.

Very Weak Ministry of Tribal Affairs

What are the roles of the **Ministry of Tribal Affairs** and the **National Commission for Scheduled Tribes**? The former apparently only serves to collect incomplete statistics of tribal eviction and preparing reports for bureaucratic consumption rather than protecting their interests. The later has reduced itself to the status of another useless department of the former (as will be discussed later), despite being a constitutional powerful body that could undertake investigation against atrocities on the tribals, if set-up properly. The toothless-ness of these bodies is exemplified in the following comments:

The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes in a report submitted to the Lok Sabha on 23 October 2008 observed, "**Notwithstanding Act and regulations to control alienation of tribal land, tribal people are being alienated from their land in the name of development and due to insufficient amount given to them for their land, they migrate to other places in search of livelihood.**"

It further stated that "**tribals should not suffer in the name of development**" and recommended that "**the Ministry of Tribal Affairs should take immediate su-moto action whenever it is reported that tribal people are agitating against displacement and endangerment to their lives.**"

Indian Tribes

An Overview

India has the second largest concentration of tribal population, after that of the African continent. Tribals are generally called 'Adivasis' implying 'original Inhabitants' of the land. There are **698 Scheduled Tribes** spread all over the country barring States and Union Territories like Chandigarh, Delhi, Haryana, Pondicherry and Punjab. **Orissa** has the **largest** number – **68 Scheduled Tribes**. They are notified as Scheduled Tribes (STs) by the President of India under Article 342 of the Constitution. The first notification was issued in 1950. Characteristics like the tribes' primitive traits, distinctive culture, shyness with the public at large, geographical isolation and social and economic backwardness etc are considered before a tribe is considered Scheduled Tribe. Administratively, they are grouped separately in the Fifth and the Sixth Schedules for the Central India and the North-East regions, respectively.



Although the genesis of the concept of Scheduled Areas dates back to the Scheduled Districts Act of 1874, in the British colonial period, the Scheduled Areas were retained to enable the tribals enjoy their customary rights without exploitation and to develop and protect their environments.

Tribals constitute about 82 percent of the total population of the country and have a rich and distinct identity and culture. Each of the tribal community has its territorial

identification. They live in close proximity to nature and rather isolated from the mainstream society. Women in the tribal communities enjoy equal status with men.

As per 2001 census, of the 86 million tribals about 80 percent live in the Middle India belt of Andhra Pradesh, Orissa, Jharkhand, Chhattisgarh, Madhya Pradesh, Northern Maharashtra and Southern Gujarat. Around 12 percent or about 10 million live in the Northeast. The rest are spread over the remaining States.

Most tribes in Middle India come under the *Fifth Schedule* that accords protection to their land and culture. Some tribes in the Northeast come under the *Sixth Schedule* that grants them greater autonomy than their Middle India counterparts have. In response to their nationalist struggles, the Parliament amended the Constitution to allow the tribes of Nagaland and Mizoram to run their civil affairs according to their customary laws. Most others do not have any special protection other than the rather weak protective laws.

Traditional Knowledge

Dwelling amidst hills, forests, coastal areas, deserts, tribals over the centuries have gained precious and vast experience in combating environmental hardships and leading sustainable livelihoods. Their wisdom is reflected in their water harvesting techniques, indigenously developed irrigation channels, construction of cane bridges in hills, adaptation to desert life, utilization of forest species like herbs, shrubs for medicinal purposes, meteorological assessment etc. Such invaluable knowledge of theirs needs to be properly documented and preserved lest it should get lost in the wake of modernization and passage of time.

Over the centuries, the tribal people have developed their own medicine system based on herbs and other items collected from the nature and processed locally. They also have their own system of diagnosis and cure of diseases. They believe in taboos, spiritual powers and faith healing. There are wide variations among tribals in their health status and willingness to access and utilize health services, depending on their culture, level of contact with other cultures and degree of adaptability.

Socio-Economic Dimensions of Tribal Communities

The tribals have been living in forest and mountainous regions, in the close proximity of nature. The economy of the tribals has been primarily hunting-foraging and shifting cultivation. More than 90% of the tribals, to a large extent depend on forests and forest resources for their livelihood. The scheduled tribes have been facing many socio-economic and psychological problems since historical times. The large scale land transfers to non-tribals culminated in armed tribal uprisings in the late 19th and early 20th centuries. The forest laws since the British time have been curtailing the rights and movement of tribals in forest regions.

Use of Minor Forest Produces (MFPs) by tribals has been significantly reduced. Exploitation by money lenders and contractors, problems of credit and market for Minor Forest Produces (MFPs), poverty, hunger, malnutrition and impoverishment have been the perennial problems for them. Land alienation and displacement appear to always lurk around the corner for most tribal groups. Many tribal groups have virtually reached a state of total collapse and seem to be fighting a grim battle for survival. The occurrence of tribal uprising against alienation of land and loss of livelihood in different parts of the country is a glaring testimony.

In pursuance of the article 46 of the Indian Constitution, the welfare of the Scheduled Tribes (STs) is being looked after by the State Government. The Schedule Five of the Indian Constitution empowers the State Governors to modify the State and Central Legislations regarding their applicability to the Scheduled Areas and to frame regulations for good Governance in these areas. Things certainly look good on paper!!

Community Resources are Central to Tribal Culture and Survival

Unlike the mindset prevalent in the modern society, tribals do not view land and forests as merely economic commodities; for them these are at the centre of their culture and identity. Traditionally they have built their economic, social and political systems and developed sustainable management systems around them. Basic to their culture is equity i.e. ensuring that every family gets enough for its needs. Secondly, the resources are treated as renewable i.e. used according to need and preserved for posterity. Thirdly, women enjoy relatively higher status as a productive member of the family working in the community owned land and forests. Under the Land Acquisition Law of 1894, the community resources are labeled common property resources (CPR) which is not owned by individuals (and can be acquired by the authorities without compensation to the community).

Being simple folks tribal people have been often exploited to forgo their foremost important resource – land – to non-tribals. Thanks to the archaic law of nineteenth century, they don't enjoy legal rights on the common surrounding resources – the common property resources (CPR) – which the community shares for survival. If the CPR land is taken away their very survival is threatened. As mentioned, this CPR land can be acquired without worries of compensation and opens the ground for further exploitation of the helpless poor folks.

Their whole lifestyle come under attack and a threatening crisis develops when the common community resource is alienated from them. Once alienation of land takes place or deforestation occurs, the shortage of resources puts them in the hands of moneylenders. For sheer survival they have to abandon their traditional culture based on community feelings and cooperation, and absorb a new culture which is individualistic and isolationist.

Once these resources are lost, a tribal women ceases to be an economic asset. If jobs and land are given, they are in the name of men. So power passes from her to the man and to his son. She is reduced to being only a housewife and gets confined in the kitchen. With it also her social status suffers. Then children start suffering.

Tribals' Displacement and Land Alienation

According to the colonial Land Acquisition Act 1894, the CPR land is considered State property. According to the Act, land in tribal regions either has individual ownership or it is common property of the community (CPR). In case of acquisition, only individual ownership land is entitled for compensation, not the common property resources (CPR). This made the CPR land an easy prey for grabbing.

The LLA 1894 that supersedes all other legislations and makes it possible for the State to acquire land under a "public purpose" that is yet to be defined. It recognizes only individual ownership. What does not have an individual patta is State property. It facilitates acquisition of tribal revenue and forest CPRs without even a notification and with no compensation. Further, the states' way of counting the number of displaced is also shabby: it is blind towards those deprived of livelihood without physical relocation. These are people dependent on the CPR, including both the tribals and the non-tribals.

Right after partition, in the West Bengal East Pakistani Hindu refugees either occupied or were rehabilitated on at least 230,000 hectares, of which 80,000 ha was predominantly tribal common property resources (CPR).

In Assam not less than 140,000 ha of land was used for refugee rehabilitation, all but 6,600 ha of it predominantly tribal CPRs. Similar figures can be given from Meghalaya. The Chakma refugees displaced by the Kaptai dam in East Pakistan in the mid-1960s were resettled in Arunachal Pradesh. Much tribal land was used for refugee rehabilitation also in the Koraput district of Orissa, Bastar of Chhattisgarh and in Jharkhand.

Now although there are protective laws in the form of the Fifth Schedule, the PESA Act 1996 and the Forest Rights Act of 2006, there is very weak political will to implement them. Besides, vested interests of rich non-tribals are always ready to exploits the loop-holes on the laws and in collaboration with concerned officials and deprive the poor tribals their basic rights.

Genesis of the Faulty Development Model

Evictions of tribal from their lands to pave way for the so-called "development" projects are a grave reminder of how the British must have entered and occupies territories – the common thread is exploitation of the land or its resources for people other than the natives. When people like Anna Hazare or Baba Ramdev say that at partition there was only transfer of power from the White to the Brown rulers, no one can fault them given such ill treatment to the native tribals in the so-called free India.

The question no one in the Indian political class asks is: **Why should the peaceful co-existential lifestyle of voiceless, uneducated (in modern terms), and defenseless tribes which is responsible for the existence of natural resources in their lands, be sacrificed in favor of the corporate or urban middle class lifestyle that only knows how to consume and nothing about preserving what they are consuming?**

The corporations would vanish at the first signs of dwindling profits in the future after spoiling the local ecology and forcing thousands to give-up their dignified way of living with the nature. What will be left for your kids thereafter?



The British colonial regime had robbed the country of its resources and had left it undeveloped and impoverished. However, when India launched its five-year plans it forgot that the development of the West was possible only because of the exploitation of the working class at home and of the colonies abroad. The colonialists turned the colonies into suppliers of raw materials and capital for the industrial revolution in Europe and captive markets for its finished products. That impoverished the colonies.

Newly independent countries, after the World War II, that followed this path were bound to impoverish some of their own communities for the benefit of their middle class since they did not have colonies to exploit. Indian planners were convinced that western development resulted from technology alone and chose precisely this path, unfortunately. Its result is seen in its impact on most tribes who live in the resource rich backward regions. Their

resources have been exploited in the name of national development and people have been displaced in order to acquire land for projects. As a result, India has made economic progress but at the cost of suffering and hardships for the tribals who lived in resource rich regions.

Deforestation too has been high for industries and other development projects. Its net result is tribal impoverishment. More than half of them are malnourished, two thirds continue to be illiterate and live below the poverty line. Today globalization adds to their woes. More land than in the past is being acquired to encourage investment by the Indian and foreign private sector which is eyeing mining land in Jharkhand, Orissa and Chhattisgarh. Thus, there will be more displacement than in the last 60 years, much of it tribal for mining in Middle India and dams in the Northeast.

Social Justice and National Interest

"Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override." - **John Rawls**

"If you are to suffer, you should suffer in the interest of the country." - **Jawaharlal Nehru**

Land Acquisition and the Current Legal Status

The land acquisition process in India has lately assumed a controversial and debatable dimension. The recent uproar against the land acquisition in Nandigram at Singur and Greater Noida and the verdict of the apex court has brought the Land Acquisition Act and the process of land acquisition under a general discussion.

Land Acquisition may be defined as the action of the government whereby it acquires land from its owners in order to pursue certain public purpose or for any company. This acquisition is subject to payment of compensation to the owners or to persons interested in the land. Land acquisitions by the government generally are compulsory in nature, not paying heed to the owner's unwillingness to part with the land.

The process of land acquisition is initiated by the government and the land owners have no role to play in it except for filing of objections while collecting compensation of the land. Various state governments come with several kinds of schemes for the people whose land is acquired by the state. The predominant purpose of any acquisition of land by the government has remained "public welfare" which can be development related activity or construction of various industrial, housing schemes. By and large the land acquisition by the state government is upheld by the courts whenever challenged because the "public purpose" is always kept in mind by the courts dealing with such cases.

The challenge to the award and the filing of objections is in the designated revenue courts and the matters are dealt specifically by such courts. Acquisition and requisition of property falls in the concurrent list, which means that both the centre and the state government can make laws on the matter. There are a number of local and specific laws which provide for acquisition of land under them but the main law that deals with acquisition is the Land Acquisition Act, 1894.

Land Acquisition Act, 1894

Legacy of the colonial British, the **Land Acquisition Act** of 1894 is a law still prevailing in India and Pakistan that allows the government to acquire private land in those countries.

The land acquisition act of 1894 was created with the expressed purpose of facilitating the government's acquisition of privately held land for public purposes and for the companies. The word "public purpose", as defined in the act, refers to the acquisition of land for putting up educational institutions or schemes such as housing, health or slum clearance, apart from the projects for rural planning or formation of sites. The expression "land" includes benefits that arise of land and things attached to the earth or permanently attached to the anything fastened to the earth.

The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the societies registration act, 1860 and co-operative societies established under the co-operative societies act can also acquire the land for developmental activities through the government.

Such land is typically acquired by the government through payment of compensation to landowners as per market value. Moreover if the compensation given is under protest than as per the enactment the awardees are entitled to refer the matter to the court for determination of requisite amount of compensation.

After independence in 1947, the Indian government adopted "Land Acquisition Act-1894" as a tool for land acquisition. Since then various amendments have been made to the 1894 act from time to time. However, despite amendments the administrative procedures have remained same. The *Ministry of Rural Development* being the Nodal Union Government to administer the Land Acquisition Act, 1894, processes the proposals for amendment of various provisions of the said Act from time to time.

Land acquisition in Scheduled Areas is not possible

As there are number of Protective Land Laws, Legislations, Regulations, Forest Laws, Government Policies, Court Orders and Judgments, and Government Orders (GOs) which prohibit the land transfer in Scheduled Areas. In spite of all these protective and welfare laws made by the government for the welfare of tribals, the Governmental agencies have been acquiring the tribal lands in the name of National interest in contravention to all the Constitutional Provisions. Clearly the protective laws of the tribal areas are being manipulated where the legal access to tribal lands and resources is denied.

Key Problems with the Land Acquisition Act, 1894

Designed by the British to serve their only purpose of taking-over land to serve their colonial interests, the law is too narrow and lacks humanitarian touch and sense of justice that any modern law should have.

Method of fixing the monetary compensation: The land owner is entitled to the compensation determined on the basis of the *market value* of the land on the date of preliminary notification – no consideration of rising future values as a result of the development project. It is determined by the Collector, and for any objections under Section-5 and Section-9 of the Act, the Collector and Government act as the Quasi-

Adjudicatory Body, and the suits to a civil court are specifically barred. There is no provision for an independent judicial body to fix the amount of compensation calculated and hear the objections.

No consideration of rehabilitation – reconstructing the lives of displaced and affected people – is clearly the most glaring short-coming of the 1894 Act, which instead emphasizes cash compensation for loss of land and that too without specifying any time limit. This has allowed considerable laxity to the officials further annoying the already affected people. Even with some time limit, the larger issue of rehabilitation would remain.

A lack of rehabilitation policy violates Right to Life under Article 21 and Right to Equality under Article 14 (interpreted as right against arbitrariness) of the Constitution of India.

No provision for dialogue with the affected people: The government does everything arbitrarily, the only thing the dissatisfied land owner can do is to file objection regarding compensation (and wait for decision). This is nothing but a mockery of democracy – one is losing not just property but age-honored lifestyle and the law offers no platform to express one's opinion.

The only way an affected person can say something is by way of filing an objection within thirty days from the date of notification in the gazette. The objections will be valid on one or more of the following grounds:

- That the purpose for which the land is proposed for acquisition is not a public purpose.
- That the land is not or less suitable than another piece of land for the said purpose.
- That the area under acquisition is excessive.
- That the acquisition will destroy or impair historical or artistic monuments or will desecrate religious buildings, graveyards and the like.

The collector after hearing the objections will submit his report to the government who will finally declare the land for acquisition under the Section 6 of the Act. After notification the collector proceeds with the claim. Needless to say, this undemocratic situation is loaded against the poor tribals.

Total silence about project affected landless people: They often survive working for land owners and collecting natural produce from the CPR land. In fact, a self sufficient infrastructure of small workers doing various useful things automatically develops in any settlement. By allowing acquisition of common property like wells, grazing fields, etc it renders them without means of sustenance and survival. In tribal areas such facilities fall under traditional community rights – the 1894 Act is blind towards such rights.

Vague and wide Definition of "Public Purpose": Under **Section-4** of the Act, the Government is required to make a public notification of the intention to take over the land for a "*public purpose*." Its definition under Section-3(f) is quite vague and is often interpreted very liberally to include a variety of uses such as housing schemes, roads, play grounds, offices and factories, benefiting only a portion of the society by the Collector and State Government taking advantage of the wide definition. In fact, the Supreme Court in various cases has laid down that the "*Public Purpose*" is hard to define and the Government is the best judge to decide whether a purpose falls under this definition. Under the existing

legislation, even private corporations are granted the right to acquire land under certain sections.

After independence, the constitutional interpretations sought to make the State supreme reflecting the then popular socialistic sentiments. Parliament added the Ninth Schedule to the Constitution through the very first amendment in 1951 in order to immunize certain laws against judicial review. Under the provisions of Article 31, which themselves were amended several times later, laws placed in the Ninth Schedule pertaining to acquisition of private property and compensation payable for such acquisition cannot be challenged in a court of law on the ground that they violated the fundamental rights of citizens. Therefore, the government can use these laws and easily infringe upon the basic rights of citizens.

Corporate Tactics: *Benami* Land Transactions

There are explicit laws for the protection of tribal land rights in scheduled areas. The Chhattisgarh Land Code, the 1970 Act of Andhra Pradesh and several other laws in Madhya Pradesh, Jharkhand and Orissa prohibit the transfer of tribal land to non-tribal people. Yet even before the advent of corporations in mineral rich areas the acquisition of lands by non-tribals through tribal mediators has been taking place. For example, in states like Madhya Pradesh the kins of politicians and senior bureaucrats acquired land in the name of tribal people and built large sugarcane farms and houses on them.

However, *benami* transactions have acquired a new significance under the neo-liberal regime. With the opening up of the tribal areas through privatization of the mineral and infrastructure sectors, corporate houses have been penetrating into the tribal areas. Normally they do not wait for necessary acquisition procedures as well as forest and environmental clearances before they start their projects. Power companies in Chhattisgarh have been using *benami* deals to hasten project implementation and circumvent formal procedures.

The Avantha group of companies started their power project even before they had approached the government to acquire 358 hectares of land (of which about 50 hectares is tribal land) for the project. This is only one power project in Chhattisgarh. There are 70 other coal thermal power projects coming up in mineral rich areas and most industrial houses have purchased lands in the name of some tribal servants or guards employed by them or even unknown tribal people. In the Janjgir-Champa district the Sarada Energy and Mineral Limited purchased 24 hectares of land in the name of three tribal people for Rs 2.5 crore. In the same district, one village elder bought land from 12 tribal families for Rs 3.36 crore for the Videocon Company – needless to say that the corporate house provided him the money.

Probably the most prominent case is that of Sandeep Kunwar, son of the Chhattisgarh home minister, who bought lands from several tribal families for a power company. The land was bought at one third the rate of the selling price prescribed by the state government. Thus the tribal land owners got a far lower price than they would have received if the state acquired their land; however, the tribal middlemen made good commission from the power company.

In Madhya Pradesh also the foundations of illegal mining operations are laid down by *benami* land deals. In the Satpura Forest Range of the Betul district, illegal mining

operations are carried out on *patta* lands given to tribal people for farming under the Forest Rights Act. It has been reported that families of Congress and BJP MLAs in Madhya Pradesh own many mining companies that carry out illegal operations in mineral rich areas like Sehore and Betul. Similar illegal mining operations are rampant in Andhra Pradesh also. The bauxite mining in the Araku Valley has been going on in the lands of small tribal farmers. In many cases the Andhra Pradesh Mineral Development Corporation acted as a front for private companies and took over lands of small farmers.

How Authorities Play Games with Tribals

Repairing Government Buildings with Tribal Funds!!

A report by the Comptroller & Auditor General of India, tabled in the Jharkhand State Assembly in March 2008, found that the Jharkhand government used only Rs 85.55 crore out of Rs 183.84 crore it had received from the Centre during 2003-2007 under the Integrated Tribal Development Project. The unused funds were kept in banks and the interest it earned was used to repair official buildings.

Essar's proposed steel plant in Jagatsinghpur needed about 2000 acres of land. The company identified nearly 1,925 acres land of which 1,663 acres are owned by the villagers and 262 acres by the government. The state government already handed over 103 acres to the company. The locals alleged that the 103 acres given to Essar Steel were acquired by the Commerce and Transport department of the government of Orissa to set up the Paradip Port Trust in 1962-1963. The department had acquired the land at a cost of Rs 300 per acre but sold the land to Essar Company at the rate of Rs 3 to 4 lakh per acre. Essar Steel has already completed dredging and sand filling in 103 acres of acquired land at the Mahanadi river mouth and the dredging has resulted in the inundation of more than 400 acre of paddy land. The district administration has issued a notification to the company but no compensation has been paid to the farmers. In July 2008 the affected families demanded due compensation for the inundation of their agricultural land.

In 1995 the government of Orissa signed a Memorandum of Understanding with the Tata Steel for establishing a mega steel plant near Gopalpur in Ganjam district. For this, the Tatas acquired 2,296 acres of private land and 793 acres of government land near Gopalpur and around 1500 families had been displaced. Highly fertile irrigated land was acquired by the company. But the proposed steel plant never came up; the company has only set up a technical training centre over 10 acres of land. The rest land has been lying vacant since 1997.

In 2007, the State Industrial Development Corporation, government of Orissa, handed over yet another 300 acres of land to the company. Since the Tata Steel failed to set up any steel plant at the acquired land, the displaced villagers have been demanding return of their land acquired by the company. The Tata Steel promised jobs to all eligible youths from the displaced families but so far the company has employed only 47 youths out of around 604 eligible youths.

A Recent Tale of Financial Irregularity

A report published in the Indian Express newspaper (April, 2012) points to a CAG report revealing gross irregularities perpetrated by the Orissa government officials.

The Comptroller and Auditor General (CAG) has unearthed a land scam in Orissa where the state government acquired land for industrial houses like Vedanta and Posco by reportedly misusing existing provisions of the Land Acquisition Act.

The CAG also found that the companies were not using the land for which they were allotted and instead, hoarding land whose market value ran into thousands of crores.

The CAG report said 4,967.08 acres of private land, valued at Rs 165 crore (approximate present market value is Rs 901.305 crore), were acquired between July 2002 and March 2011 for setting up of industries by six business houses using the emergency provisions under Section 17(4) of Land Acquisition Act, but the land was not used for several years.

The government acquired land for Aditya Aluminium (Sambalpur) — 2021.41 acres, Vedanta Alumina Limited (Kalahandi) — 826.56 acres, Dhamara Port Company Ltd (Bhadrak) - 1,070 acres, and Posco India Ltd (Jagatsinghpur) — 437.86 acres.

In Orissa, land for industries is acquired under Central and state laws, primary of them being the Land Acquisition Act, 1894. The Industrial Infrastructure Development Corporation of Orissa Act, 1980, is also invoked in cases where Industrial Infrastructure Development Corporation (IDCO) acquires land for companies. Between 1995 and 2011, the Revenue and Disaster Management Department allotted 50276.887 acres of land, including 33355.127 acres (66.34 per cent) of acquired private land to 107 companies for setting up of industries in 16 districts.

None of the conditions prescribed in executive instructions of September 1985 issued by the government for land acquisition under emergency provisions were fulfilled in those cases.

"Instead of giving detailed justification for applying such provision, only general remarks like 'the project is being executed on priority basis', 'requirement of land was of emergent in nature' were indicated in the applications by the requisitioning officers. The land was not put to use even after 15 to 75 months from the date of publication of notification under section 4(1) against the stipulated time period of six months," the report said.

The biggest scam could be hoarding of 5293.22 acres of land by IDCO and two companies for a period ranging between three and 15 years. IDCO was allotted 1141.98 acres of government land 4151.24 acres of private land valued at Rs 66.68 crore (present market value Rs 2631.98 crore) between 1996 and 2006. In 1996, IDCO handed over 2,800 acres to Tata Iron and Steel Company for a factory at Gopalpur. IDCO handed over 1,300 acres to Aditya Aluminium between 2006 and 2008.

The CAG noted that in some cases compensation award passed without reckoning the cost of standing trees. And due to wrong computation of the market value of land, there was under-assessment of compensation which benefitted the promoters of industries.

Land Alienation and Tribal Reaction in Jharkhand, Orissa, and CG

Over the years, governments have successfully created an illusionary perception of "development" related activities to divert attention from the forced eviction of poor tribals. Phrases like "**Development Induced Displacement**" have been coined to create the illusionary impression that displacement of tribals must be taken for granted whenever "development" takes place. A better and more accurate phrase would be: **Displacement in the Name of Development**.

Across the country tribals are realizing that the so called "development" activities and also the deployment of security forces to flush out naxals have a common goal: their eviction so that the local minerals and other resources can be exploited to sustain the so-called GDP

growth rate of the country. They also realize that the so-called constitutional provisions to safeguards their traditional lifestyle, culture, and identity are too flimsy to count upon.

Therefore, the number of protests against compulsory acquisition of land is rising. For example, construction of manufacturing units such as Tata's Nano car in Singur, in which 997 acres of agricultural land was acquired to set up a factory for one of the cheapest cars in Asia, (the project was subsequently shifted to Gujarat) or for developing Special Economic Zone such as in Nandigram or construction of large dams like Sardar Sarovar Dam on the river Narmada, which famously led to a cancellation of grant by World Bank due to protests under the argument that the **tribal population was getting displaced under unfair conditions** among other reasons such as environmental impact of the project. The effects of displacement spill over to generations in many ways, such as loss of traditional means of employment, change of environment, disrupted community life and relationships, marginalization, a profound psychological trauma and more.

According to the 2001 Census, **Chhattisgarh** (31.8%) has the highest percentage of ST people in its population followed by **Jharkhand** (26.3%) and **Orissa** (22.1%). The tribal communities in these states have faced rampant exploitation, displacement and dispossession from their resources at the hands of the state.

A. Chhattisgarh

The total population of the State as per the census of 2001 was 2, 08, 33,803, of which the scheduled Tribes were 66,16,596 which is 31.76 percent of the total population. As per the 2001 census, there are 42 different tribes including five Primitive Tribe Groups (PTGs) comprising about 12 lakh tribal families. The five PTGs are: **Abujhmaria, Baiga, Birhor, Hill Korwa, and Kamar**. The entire PTG population of 1.11 lakh is under the BPL category.

The ST population is spread over the entire state with Kanwar tribe predominantly in the north while the Gonds are the majority tribe in south. Gonds are the biggest tribe forming 55% of the total ST population. At the district level, tribals have largest concentration in Dantewada (78.5 percent) followed by Bastar (66.3 percent) and Jashpur (63.2 percent) districts. Janjgir-Champa district has the lowest proportion of tribal population (11.6 per cent).

Chhattisgarh: "Rich Lands of Poor People"

"Development is not only about minerals and natural resources and a simple 'dig and sell' proposition, it is about tribals and backward castes and their land and livelihood alienation. It is about poverty, backwardness and Naxalism. It is also about deforestation and biodiversity impact, water security and pollution." – **Chandra Bhushan, a researcher on mineral policy**

Large scale alienation of tribals from their land is going on rampantly in Chhattisgarh. Whether for coal blocks in Raigarh, or a power plant in Premnagar, cement plants in Tilda, or a large industrial area in Rajnandgaon, bauxite mining in Sarguja and Jashpur, sponge iron or diamond mining in Devbhog, tribals are facing and resisting displacement. Same is the story for the Tiger Reserve, Elephant Reserve, Wild life Sanctuaries etc. in Bilaspur, Jashpur and Dhamtari districts. The list is endless. A peasant woman, Satyabhama, lost her life while being force-fed to break the indefinite fast she had undertaken to save the waters of the Kelo river from pollution by Jindal Steel in the Raigarh district.

In September 2008, a road blockade by hundreds of villagers of the "Jameen Bachao Sangharsh Samiti" stalled a proposal for handing over an area of 105 square kilometers situated in 30 villages of Kunkuri Tehsil of district Jashpur to the Jindal Power and Steel Limited "to search for gold, diamond, platinum group of minerals, precious and semiprecious gemstones".

The way companies are zeroing on mineral resources can be clearly seen in the cement sector. There are about 8225 million tones of limestone in Chhattisgarh, predominantly in the Raipur, Durg, Janjgir, Bilaspur, Rajnandgaon, Kawardha and Bastar districts, a large proportion of which is cement grade. In the past decade the plant of the public sector Cement Corporation of India at Mandhar (Raipur) has closed down. The well known brands of ACC and Ambuja have been taken over by the Swiss multinational Holcim. Lafarge has also taken over two cement plants.

Seven percent of the country's bauxite, about 198 million tones, is available in the Sarguja, Jashpur, Kawardha, Kanker and Bastar districts. It is being mined at present in Sarguja by the now privatized Sterlite and the Hindalco companies. Hundreds of adivasi families have lost their lands. In the name of employment one person from the affected family were employed as lowly paid contract labor. Discontent is rife among these landless adivasi miners.

Sixteen percent of the country's coal (39,545 million tones) is to be found in the Raigarh, Sarguja, Koriya and Korba districts of northern Chhattisgarh. In 2007, the adivasis of Khamariya Village, raising objections to giving up their lands to the Jindal Coal Mines, were beaten up during in a public hearing arranged by the district administration but was steered by the Jindals.

The public hearings for environmental clearances for three more power projects including AES Chhattisgarh Power (a joint venture with the American energy giant) were recently stalled by villagers protesting that they had not been notified and they apprehended widespread pollution.

The Indian Farmers Fertilizer Cooperative Ltd (IFFCO) had to withdraw its proposal of setting up a 1000 mw coal-based thermal power plant in Premnagar in Sarguja district after strong protests. When the company persisted and got their leader arrested, over 1,000 people marched to the police station to get him released. The new site subsequently chosen by IFFCO, 10km away, also came into serious controversy recently, when villagers who had passed a resolution against the project.

In the coal sector, the presence of the coal mafia is so overpowering that an MLA of Dhanbad has alleged that "SECL could earn only Rs 800 crore profit in the fiscal year 2006-07, whereas it (the earning) could have been more than Rs 30,000 crore if the government could have reduced the pilferage." In particular it is an open secret that in Chhattisgarh the Aryan Coal Beneficiaries (that also runs the daily newspaper Haribhoomi) has a monopoly over the washery business and therefore makes a lot of money at SECL's expense.

One-fifth of the country's iron ore – about 2336 million tones averaging 68% purity is found in the Dantewada, Kanker, Rajnandgaon, Bastar and Durg districts. The Bhilai Steel Plant is one of the world's most efficient steel plants, yet it is being deliberately tripped by private players particularly Jindal Steel & Power.

The Bastar region is one of the richest in mineral resources – not only in iron ore, but also perhaps a host of other unexplored minerals including limestone, bauxite, and even

diamond and uranium. In May 2008, about 5,000 tribals from 25 villages took out a two-day protest 'padyatra' from the site of the proposed steel plant of Essar to Faraspal of district Dantewada, to protest mining of iron ore from the Bailadila mountains. They claimed that the government has granted mining leases to 96 industrial houses besides Tata and Essar in the Bailadila area and demanded that the mountains, 40 km long and 10km wide, which contained iron ore deposits to the tune of 300 crore tonnes should not be leased to private companies for mining as it could pose a threat to the existence of the mountains as well as the local tribal culture.

B. JHARKHAND

As per 2001 census, the Scheduled Tribe (ST) population of Jharkhand State is about 71 lakhs constituting **26.3 percent** of the total population (2.7 crore) of the State. Among all States and UTs, Jharkhand holds 6th and 10th ranks in terms of the ST population and the percentage share of the ST population to the total population of the State respectively. The state has a total of thirty (30) Scheduled Tribes and all of them have been enumerated at 2001 census. Tribal population of Jharkhand is concentrated mainly in Chhotanagpur plateau (Ranchi, Hazaribag, Giridih, Palamau, Dhanbad, Bokaro, and Singhbhum, districts) and Santhal Parganas.

In Jharkhand, cases of alienation of tribal land have risen despite two laws – Chotanagpur Tenancy Act and Santhal Pargana Tenancy Act to prevent sale of tribal land to non-tribals in the state. A total of 2,608 cases have been filed by tribals with the Special Area Regulation Court in 2003-2004, which increased to 2,657 cases in 2004-2005 and further to 3,230 cases in 2005-2006. As of January 2007, 3,789 cases have been filed with the Special Area Regulation Court in 2007 for recovery of tribal lands.

Lack of lawyers to take up land-related cases of the tribals further delayed adjudication. Around 5,500 land-related cases of tribals were pending in various district courts in Jharkhand as of March 2007. The government of Jharkhand had an annual budget of Rs 50 lakh to provide legal assistance to poor tribals to fighting their land related cases. However, less than 10 per cent of the total allocated budget was spent over the last six years. Lawyers were unwilling to fight cases on behalf of tribals seeking government assistance. The offer of Rs 5,000 per case was cited as one of the main reasons for pendency of land-related cases in courts.

In February 2007, the Supreme Court allowed a tribal petitioner to file a fresh petition before the Jharkhand High Court for recovery of his land from a mining company. In its order, the Supreme Court held that the Jharkhand High Court was wrong to dismiss the petition of Surendra Dehri, a tribal who alleged that over 10,000 acres of "notified tribal land" had been usurped by mining contractors in connivance with the government officials. The High Court had dismissed his petition saying that it involved only "private interest". But a bench of Supreme Court comprising Justices Agarwal and Naolekar stated that a clear violation of constitutional guarantees given to the tribals could not be held to be related to "private interest".

The tribals have also been protesting against the implementation of Koel Karo hydroelectric project by National Hydroelectric Corporation over the Koel and Karo rivers. The project, if implemented, would submerge as many as 256 villages involving 50,000 acres of forest area, 40,000 acres of agricultural land and 300 forest groves (considered sacred by the tribals), 175 churches and 120 temples.

In Jharkhand again, world's largest steel maker, ArcelorMittal has been facing stiff resistance from the tribals who organized themselves under the banner of "Adivasi Moolvasi Astitva Raksha Manch" in the Torpa-Kamdara region. ArcelorMittal needs around 11,000 acres of land, of which 8,800 acres is required to set up a 12-million-tonne steel plant and 2,400 acres for establishing a township. The tribals claimed that the land identified by ArcelorMittal for the steel project is agricultural land and tribal lands are not transferable to non-tribals.

Regardless of the specific issue, all over the state, they are fighting the battle for survival against forces that wants to throw their future generations into an alien life of poverty and humiliation.

Jharkhand State: Tribals Dream Remained just a Dream

On 15 November 2000, when Jharkhand came into being, a long standing demand for separate statehood was fulfilled, not merely to establish a distinct identity but also to do away with the centuries of injustice. The first demand for the separate state of 'Jharkhand' was raised in the year 1914 by tribals, as recorded in the State Reorganization Committee Report (1955-56). For far too long, the mineral-rich areas of Chota Nagpur and Santhal Pargana were exploited and tribal people displaced in the name of development. Racial discrimination of tribals by outsiders, referred to as 'dikus' in the tribal tongue, was widespread.

However, happenings shortly after creation of the Jharkhand State wiped out the illusionary hype over tribal welfare or respect for their traditional lifestyle. Within few years of Jharkhand state, tribals became more insecure than ever. In reality, all they got was a tribal Chief Minister and a few reserved constituencies. "Development" for the sake of urban lifestyle became synonymous to up-rooting poor tribals from their traditional land and lifestyle. How the political-corporate nexus became active to grab tribals' land, minerals, and other resources became apparent when over 42 MOUs were signed soon after the state was formed.

Clearly the policy making system of the state was high-jacked by the corporate lobby riding high on the wave of liberalization supported whole-heartedly by the US trained PM and his elite team of economists. But the tribals uprising and various constitutional laws favoring tribals against land acquisition are clear-cut hurdles on their fortune making designs.

According to a human rights report published by Jharkhand Human Rights Movement (JHRM), the state government of Jharkhand has so far signed 102 MOUs that go against the Fifth Schedule of the Constitution that guarantees to tribals their right over the land they live in. In 2011, Arcelor Mittal had to pull out of a proposed project in Jharkhand due to people's opposition. The corporate sectors have been trying hard to change the status-quo in their favor and in doing so they have adopted some dubious means.

Reports of Indian People's Tribunal on Environment and Human Rights indicate that a total number of 6.54 million people have so far been displaced in Jharkhand in the name of development. The ongoing land acquisition at Nagri village (near Ranchi) for IIM and National University for Study and Research in Law (NUSRL) may seem like a developmental project in the eyes of the educated affluent. However, these elite educational institutes come at the price of displacing more than 500 tribal villagers. Every such 'development' project – dams, factories, mines, universities – causes displacement of tribal people.

The private sector seems to have taken special interest in drastically reforming the CNT Act. Corporate owned newspapers like 'Prabhat Khabar' and 'Dainik Bhaskar' have campaigned vigorously in support of reforming the Act to make transfer of land from tribals to non-tribals more flexible.

The state governments, irrespective of the party banner, have all participated in this asymmetric confrontation against the tribal interests. **The non-inclusion of 'Sarna' religion in the religion category of the recent Census has drastically downsized the tribal population.** There have also been inefficiencies on the part of the administration in providing accurate data on tribal population, many of which are under-reported.

Evicting Tribals in the Name of Fighting Naxals

As the Red Corridor mostly falls under the tribal areas, a general perception, albeit fallacious, exists that tribals in these areas are naxals or naxal-supporters. What worsens the case is the seclusion of such areas by the concerned state administration which even after 6 decades of independence has failed to establish any communication channels with such areas. A district generally falls into the red-corridor zone not for the reason that people in these areas support naxal ideology, but because the administration is generally absent in such areas, thus giving a free hand to the naxals.

The naxal violence in the tribal areas of the country is not because they invited or harbored the naxal groups. It flourished mainly because the political class and the administrations left them utterly neglected. The armed naxals occupied the vacuum and started ruling through terror and extortion of money from everyone who had something to offer them. Hence, they became rulers of areas where police or government officials didn't dare to go.



Tribals stand on a thin line between the naxal groups and the administration – exploited and devastated by both. In naxal dominated areas, not following their orders means a sure death sentence. Thus, any meeting called by any of these outfits is an unsaid compulsion for the concerned village and not an option to choose. The state administration brands them as naxal sympathizers and the security forces go after them.

The Operation Green Hunt, started quietly a few years ago, was meant to liberate the tribals from the naxal violence and establish the rule of law.

Now, however, another powerful element has entered in the picture – the financial interests of the corporate houses. The presence of naxals provides a convenient excuse to achieve the "development" goal by scaring away the tribals from their ancestral lands.

The MNCs and mining corporations have incurred huge losses, in tribal areas: because several Naxal groups extort money to not harass or sabotage their activities which runs in hundreds of crores of rupees annually. Additionally, they are annoyed by tribals agitations over land acquisition supported by tribal laws even after signing MOUs.

Therefore, by declaring districts as naxal infected zones, the government clears the ground for future operations to be conducted by security forces. The mission now becomes to 'liberate' these zones from the evil-clutches of naxals as well as the "anti-developmental"

forces of tribals. Any prominent tribal activist or “inconvenient tribals” can be easily labeled a “naxal” and dealt-with accordingly. Settling personal scores is another reason for branding innocent people “naxal” and harassing them – this, of course, goes in parallel.

According to a report by JHRM, since the creation of Jharkhand a total of 4372 people have been arrested on the charges of being naxals. Among these, 315 are hardcore naxals on whom the government had announced prize money, however the remaining 4057 have no records of criminal offenses, and even the police have been unable to trace their naxal involvement.

In several other instances, many innocent people (mostly tribals) were killed during anti-naxal operations. On April 15, 2009 at Latehar, five tribals were picked from their home by CRPF and district police, taken to a nearby place and shot dead. The initial police investigation tried to cover up the deeds, framing these tribals as Maoists, but after much protest the Jharkhand police finally accepted them to be common villagers having no links with any naxals.

The recent exposure of anti-naxal operations in Saranda Jungle, a habitat for more than 1,25,000 tribals, has been more disturbing. In the name of Operation Monsoon and Operation Anaconda, the deployed central and state forces devastated several homes, killed innocent people and did not even spare food that was in possession of tribals. Citing specific example the JHRM revealed that during Operation Anaconda 33 villagers were arrested, but the police failed to provide any evidence against them.

C. ORISSA

Demography and Poverty of Scheduled Tribes



Scheduled Tribes constitute nearly 22.21 % of the total population of Orissa. 62 tribal communities have been designated as Scheduled Tribes of which 13 recognized as Primitive Tribal Groups (PTG). Nearly half the State’s area (45%) is under Schedule V of the Indian constitution; of the total population of these scheduled areas 68% consist of scheduled tribal population and Scheduled Caste made up 20 % as per 1991 census. The main tribes are Kondhs, Gonds, Santals, Mundas, Oraons, Bhattadas, Bhumij, Saoras, Parajas etc.; many of them traditionally depended on shifting cultivation.

Of the 75 PTGs of India, Orissa has **13 PTGs which include Paudi Bhuiyans, Chuktia Bhunjias, Birhors, Bondos, Didayi, Juangs, Dangaria Kondhs, Kutia Kondhs, Hill Kharias, Lodhas and Lanjia Saoras**. Of these, the Registrar General and Census Commissioner of India does not publish census data figures of 5 Primitive Tribal Groups – namely Kutia Khond, Dongria Khond, Lanjia Saura, Chuktia Bhunjia and Paudi Bhuyan. So development of these tribal groups is hampered and trails behind other tribes.

Orissa is one of the poorest states in India, with an estimated 47% of its population living on less than a dollar a day. The population in Scheduled Areas is rather poorer than the population in non-Scheduled Areas and the Scheduled Tribes are the poorest groups. In 1999-2000, **73 % of the Scheduled Tribes in Orissa were below poverty line** as

compared to 55 % and 33 % respectively for Scheduled Castes and General Castes. **The situation in South Orissa is even worse with approximately 87% of the Scheduled tribes below poverty line;** the socio-economic indicators in some pockets are worse than in sub-Saharan Africa.

At an average 74% of the land in Scheduled areas of Orissa is categorized as state land – which consists of 48% forest land and 26% non-forest land. Thus, three fourths of all land in the tribal dominated districts belongs to the State. Most of the tribals in these areas are either landless or marginal landowners, even though subsistence agriculture is the most important source of their livelihoods.

Gajapati, a tribal dominated district, has just 15% of its total area under cultivators' landholding, the rest belongs to the government. Roughly 93% of the rural households in this district have legal titles on a total of 9% of the district's land area. Kondhmal is another tribal district where almost 86% of the land is owned by the State (75 % of the land categorized as forest lands). In this district 66% of the rural households own only 7% of the land. The situation is even worse in the remote areas inhabited by the PTGs, where almost all the land is owned by the State.

Displacement through Development Projects

Orissa is extremely rich in minerals, most of which lies in the tribal districts. The hilly terrain and availability of water also makes them suitable for reservoirs and dams. The major dams taken up in Scheduled areas are the Machkund, Salandi, Balimela, Upper Kolab, Indrawati, Mandira etc. The major industrial projects taken up in scheduled areas have been the Raurkela Steel Plant, NALCO's Alumina refinery at Damanjodi, HAL, Sunabeda. Large number of future industrial projects are under implementation or proposed in scheduled areas including the alumina refineries of UAIL in Kashipur and Vedanta at Lanjigarh.



The richness of forests and wildlife has also led to increasing number of protected areas (wildlife sanctuaries and National parks) in the scheduled areas of Orissa. Such protected areas have created a major problem as the rights of all inhabitants, in and around these areas in the forest and forest land, are being extinguished, affecting their livelihoods and sometimes leading to displacements.

It is estimated that over 1.5 million people have been displaced due to development projects between 1951 and 1995, of which about 50% had been tribals. Further, less than 25% of the displaced tribals were ever resettled even partially. The casualness with which displacements of tribals have been treated is evident by the fact that out of 13 major dam projects before 1990, no data seems to be available on ST families displaced in 7 projects. Similarly out of 10 major industrial projects, no data on proportion of STs displaced is available for seven projects.

Except for a few irrigation projects, development projects have not provided land as compensation. Even where the principle of land for land compensation was agreed, often only cash compensation was given saying that suitable land was not available.

A study of seven development projects showed that legal landlessness increased from 15.6% of the households to 58.8% after displacement. More important, since large areas of land cultivated by scheduled tribes are not legally settled in their names, they receive no compensation when such land is taken up for development projects. A study of displacement in upper Indravati Project found that landlessness increased from 49% to 85% after displacement.

Large Scale Land Alienation

In the current decade, there has been massive alienation of tribal lands in Orissa. According to the Annual Report 2007-08 of the Ministry of Rural Development, a total of 105,491 cases alleging alienation of 104,742 acres of land have been filed in the court in Orissa. An estimated 104,644 cases were disposed of by the court. Out of these 61,431 cases were disposed-off in favor of tribals and 56,854 acres of land was restored to tribals.

Hundreds of tribals armed with bows and arrows gathered at Upper Kranti village in Similiguda block in Koraput district in April 2008 to protest against proposed land acquisition for mining project being undertaken by a private firm in the Deomali range. People living in about 40 villages were threatened with loss of livelihood and land.

Same month, scores of villagers under the banner of *Bhumihara Krushak Mancha* demonstrated in front of the Office of the Additional District Magistrate, Paradip in Jagatsinghpur district, demanding adequate compensation and rehabilitation packages from Deepak Fertilizer Ltd. The company needed more than 80 acres of land and had already acquired 65 acres of private land at the cost of Rs 15 lakh per acre. But the villagers alleged that the company had not yet held any public meeting to discuss about the compensation and rehabilitation package.

In June 2008, hundreds of displaced villagers from four panchayats of Kujang tehsil in Jagatsinghpur district protested in front of the Paradeep Phosphate Ltd demanding jobs and enhanced compensation against land acquired by the company in 1984. The protestors demanded adequate compensation, jobs, health care services and subsidized fertilizers to local farmers. The company purchased private land in 1984 at a rate of only Rs 10,000 per acre. Land losers have since been demanding more compensation.

In June 2008, violence erupted when villagers near Bhusan Steel and Strip's upcoming project in Meramunduli in Dhenkanal district tried to stop construction demanding settlement of their compensation package. The villagers alleged that they have turned into daily laborers from farmers after giving their land at throw away price and have demanded their land back. Some of the displaced victims alleged that they were harassed by the police for demanding adequate compensation.

"I was sent to jail for 16 days in March 2005. I was among four women who were harassed by the police. Altogether 21 villagers were picked up. Our only fault was that we mustered courage to demand permanent job for our children in lieu of our land," Sashi Bhoi, a resident of Sibapur village in Dhenkanal district. Another victim, Ketaki Behera, an old woman from Serpa village, alleged that the police had brutally beaten up villagers including women on 10 June 2008. She showed injury marks in support of her allegations.

Status of the National Commission for Scheduled Tribes (NCST)

"The Committee members are distressed that even the status of statutory entity does not entitle NCST to have a separate entity. They are of the firm opinion that when it was decided to create NCST, it was never envisaged that it would function as a part of the Ministry of Tribal Affairs. If it were so, there was no need to constitute the Commission as a statutory body and it could have continued to function as a non-statutory body as earlier. The NCST would not be able to work fearlessly and independently unless it is given independence in its day to day working by allowing it to decide on its own administrative, financial and legal matters."

– The Parliamentary Standing Committee on the Welfare of Scheduled Castes and Scheduled Tribes, in its Thirty-Third Report

The National Commission for Scheduled Tribes (NCST) is a powerful constitutional body mandated to protect and promote the rights of the indigenous and tribal peoples. Being a constitutional autonomous body, it has been vested with the powers of a civil court for investigation and inquiry. The power of the Commission to "summoning and enforcing the attendance of any person from any part of India and examining him under oath" as provided under Clause 8 of Article 338A of Constitution of India is enforceable even to investigate the violations committed by the members of the armed forces over whom even the National Human Rights Commission (NHRC) **does not** have jurisdiction. Hence, in a way, **NCST is more powerful than the NHRC of India**. But all this is theoretical, reality is utterly shameful.

The NCST has power to frame its own procedures but it has framed such Rules of Procedures which have it subservient to the State authorities. Rule 83 of Rules of Procedure of the NCST states: "All rules, regulations and orders issued by the Central Government and applicable in the Ministries/Departments will also apply in the Commission." – a thoughtless way to reduce a National Commission into another spineless department of the Government.

As per its Rules of Procedure, the NCST has to take prior permission from the concerned state government to investigate any human rights violation in that state and NCST team members are expected to follow the "norms" prescribed by the state authorities. The NCST has no power to implement its recommendations. Hence, the NCST has failed to protect the rights of over 85 million Scheduled Tribes in India.

Acute Shortage of Manpower

The status of NCST as a neglected department of the MTA can also be seen from the acute shortage of manpower. The sanctioned strength of staff is 124 in the NCST Headquarters in Delhi as well as the six Regional Offices. But the actual strength of staff never reached the sanctioned strength since start of its functioning. This has hugely impacted the functioning of the NCST including its ability even to reply to queries under the RTI Act. It is true that the NCST lacks sufficient funds but ironically, it has even failed to utilize even the allocated funds optimally.

In a reply to an applications under RTI Act seeking certain information from NCST, It candidly acknowledged "acute shortage of manpower" while refusing release of information. The NCST in its reply stated:

"Information sought by you covers a period of three years and relates to all the Units and Officials of the Commission and therefore, it will take huge time to compile the same. Moreover, this Commission has acute shortage of manpower to deal with the normal duties of the Commission viz. investigation into specific complaints relating to violation of safeguards for Scheduled Tribes and in case it concentrates on compiling the voluminous information sought by you, the entire work of the Commission will virtually come to halt and it will totally hamper the functioning of the Commission as per the constitutional mandate."

Nothing can be more unfortunate for the poor tribals – a constitutional body aimed to protect them from violence and harassment is reduced to the status of a toothless and neglected department.

Steps towards a National Resettlement and Rehabilitation Policy

*As of now, India as a whole **does not** have a national rehabilitation policy. However, the latest version of the combined Land Acquisition and Resettlement and Rehabilitation policy is expected to be put before the Lok Sabha before the end of monsoon session.*

Several states and some public sector companies have adopted their own state policies for displacement and resettlement. In the 1980s, Maharashtra, Madhya Pradesh and Karnataka in enacted laws on the rehabilitation of irrigation-displaced persons. In the 1990s, Orissa in and Rajasthan formulated policies for persons displaced by irrigation projects. Coal India Limited in 1994 and the National Thermal Power Corporation in 1993 promulgated their own sectoral resettlement policies. NTPC revised it in 2005 and the National Hydro-Power Corporation (NHPC) finalized its policy in 2006.

The Central government began the policy drafting process only in 1985 when the National Commission for Scheduled Castes and Scheduled Tribes indicated that about 40 per cent of the displaced or affected persons had been tribals (other sources put this figure beyond 50%). The Central Ministry of Welfare appointed a committee to prepare a rehabilitation policy for displaced tribal. However, the committee correctly said that the policy should cover all the displaced, not tribals alone; that rehabilitation should be integral to every project above a certain size in the public as well as private sectors, and that undertaking rehabilitation must be binding on the state and the implementing agencies.

Policy formulation took a new turn in 1993 when in the wake of the World Bank withdrawal from the Sardar Sarovar project on the Narmada, the Ministry of Rural Development prepared a draft, which was revised in 1994 and 1998. It was finalized in 2003 and published in 2004. That policy was intended to apply to projects displacing 500 or more families en masse in the plains and 250 or more in the hills or tribal areas known as Schedule V and Schedule VI in the Constitution.

It allowed for allotment of agricultural or cultivable wasteland to each project-affected family (PAF) to the extent of actual loss, but subject to a maximum of 1 ha of irrigated or 2 ha of un-irrigated land/cultivable wasteland subject to the availability of government land in

the district. It also provided for allotment of free site for housing and offered financial benefits to the BPL families. There were other provisions that made it appealing.

Civil Society's Attempt towards Rehabilitation Policy

Already in 1987 the National Working Group (1989) supported by the Narmada Bachao Andolan prepared a draft policy. When civil society leaders obtained the 1993 and 1994 drafts, they launched an extensive process of discussions across nation to identify the principles on which a policy should be based. The alternatives were then presented to the Secretary, Ministry of Rural Development, and Government of India in October 1995.

Silence followed after these principles were posited, until November 1997 when the Committee of Secretaries approved a new draft policy that accepted many principles enunciated by the civil society and ignored several others. However, In spite these shortcomings, the civil society considered it a good basis for interaction with the Ministry.

However, discussions stopped some months later and the ministry finalized the policy in 2003 with no participation of the Displaced / Affected people or civil society. The draft policy left out and ignored many principles accepted even by the ministries during the dialogue. It was full of the usual loopholes with hardly any positive for the poor tribals.

Then in May 2007, a Group of Ministers (GoM) took up the drafting of a new legislation along these lines. It was finally introduced in the Lok Sabha in 2011 but could not come up for discussion. Now it is again currently under revision.

Features of the Latest Land Acquisition Bill and Rehabilitation Policy

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in the Lok Sabha on September 7, 2011 by the Ministry of Rural Development but was never taken up for discussions. The Bill proposed a unified legislation for acquisition of land and adequate rehabilitation mechanisms for all affected persons and replaces the Land Acquisition Act, 1894. But in view of objections from certain states the Centre decided to revise the draft bill incorporating suggestions made by State governments to protect the interests of tribals and the sanctity of the Gram Sabhas. The government intended to reintroduce it in the monsoon session of 2012 but failed, despite the verbal noise by ruling politicians.

The Bill would protect the interests of farmers/land owners and not bar purchase of land by the private companies, corporates among others. It would enable acquisition of land for industries, industrialization and some form of urbanization. It also makes it mandatory that Gram Sabhas are consulted and the R&R package is executed before the acquired land is transferred. Under the proposed law, the R&R package would necessarily have to be executed for land acquisitions in excess of 100 acres by private companies. It also prohibits private companies from purchasing any multi-cropped irrigated land for public purposes.

In terms of specific issues, here is what the bill proposes:

Definition of Public Purpose: The proposed Bill makes “public purpose” clearer: it includes laying and developing of infrastructure such as highways, roads, bridges and railway establishments, and not malls and shopping complexes.

While the State government would not have any role in acquisition of land, it would come into the picture if the private companies petitioned for such an intervention. The government would do so only if the acquisition would benefit the general public. To safeguard against indiscriminate acquisition, the Bill requires States to set up a committee under the Chief Secretary to approve that the acquisition is of “public purpose” and the social impact assessment for the land in question has been done.

A Role for the Gram Sabhas: For the first time, the law has acknowledged the role of the Gram Sabha in the process of land acquisition, stressing that they would have to be “consulted”. This has been done to comply with other laws, such as the Panchayat (Extension to the Scheduled Areas) Act (PESA), 1996; the Forest Rights Act, 2006; and Land Transfer Regulations in Schedule V (Tribal) Areas. The Ministry of Panchayati Raj had opposed the earlier draft, stressing that the approval of the Gram Sabha was necessary for land acquisition under PESA.

Time limit for utilization of land: If the acquired land was not put to use for within five years of the acquisition, it would be returned to the original owner and the benefit of increase in the market price should go to the owner. The draft Bill will enjoy primacy over 18 other laws pertaining to land acquisition. Its provision will be in addition to and not in derogation of the existing safeguards currently provided for in these laws.

Compensation to both the land and livelihood losers: Both the land owners and livelihood losers will have to be paid compensation. In rural areas, the compensation will amount to six times the market value of the land while in urban areas it would be at least twice the market value. Apart from this, the landowners will be entitled to a subsistence allowance of Rs.3,000 per month for 12 years and Rs.2,000 as annuity for 20 years, with an appropriate index for inflation.

Land for urbanization: In the cases of land acquired for urbanization, 20 per cent of the developed land would be reserved and offered to the land owners in proportion to the acquired land. In addition, every affected family would be entitled to one job, else Rs.2 lakh.

Loss of housing: Those who lost their house in the land acquisition process would be provided a constructed house with, in rural areas, plinth area of 150 sq. m, and 50 sq. m in urban areas, as well as a one-time resettlement allowance of Rs.50,000. If the land acquired is for an irrigation project, one acre of land would be provided to each affected family in the command area. Livelihood losers would get a subsistence allowance of Rs.3,000 per month per family for 12 months and Rs.2,000 per month for 20 years as annuity, factoring in inflation.

Special package for SC/ST: Scheduled Caste and Scheduled Tribes would get a special package wherein each family was entitled to one acre of land in every project. Those settled outside the district would be entitled to an additional 25 per cent of R&R benefits. The draft envisages that ST families be paid one-third of the compensation amount at the very outset. They will also have preference in relocation and resettlement in an area in the same compact block and free land for community and social gatherings.

Tribal Displacement Plan: If 100 or more ST families are displaced, a Tribal Displacement Plan would be put in place. It would include settling land rights and restoring titles on alienated land and development of alternate fuel, fodder and non-timber forest produce. STs and SCs would also get, in the resettlement area, the reservation and other benefits they were entitled to in the displaced area. Besides, the resettlement area should provide at least 25 infrastructural amenities including schools and playgrounds, health centers, roads and electric connections, assured sources of safe drinking water for each family, Panchayat Ghars, fair-price shops and seed-cum-fertilizer storage facilities, places of worship and burial and cremation grounds.

The Way Forward

The first and foremost step at present should be to have **the National Land Acquisition and Rehabilitation and Resettlement Bill, 2011** introduced, debated, and passed by the Parliament, without allowing dilution of its key proposals. It should preferably be passed with retrospective effect, say January 1, 2007 so that major tribal displacements of recent years can be soothed away.

The toothless **National Commission for Schedule Tribes** should be scrapped and reconstituted with eminent jurists and tribal/social activists on its panel and given full authority to function as a "real" constitutional enquiry commission with legal authority. Its findings should remain outside the purview of courts, except the apex Court.

The **Ministry of Tribal Affairs** must undertake an immediate extensive project-wise survey of number of displaced as well as affected tribals across the country. It should order a fact finding inquiry as to why tribal laws such as The PESA, 1996 and The Forest Rights Act of 2006 remain subservient to other laws and come up with suitable amendments to make them un-breakable in the Schedule V and VI areas.

A strong but clear message should be sent to the top brasses of the security forces involved in combing operations in naxal infected areas that not a single innocent tribal should be harmed and that they are not there to safeguard minerals or ores from the tribals. Every act of harassment of tribals, women, or children should be dealt with exemplary punishment to act as deterrent for the future.

No other extra-constitutional and illegal army such as the "Salwa Judum" of Chhattisgarh should be allowed to come up anywhere in India. It is a known fact that Salwa Judum was no more than an army of goons, propped to serve the vested interests of powerful non-tribals behind the scene and to scare away tribals from their traditional lands so that for commercial exploitation of the local resources.

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