

# Tribal Development Policy in India

Harsh Mander

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## TRIBES IN INDIA

A considerable part of the ethnographic literature on tribes in India is preoccupied with the definition of a tribe, and the relevance of this definition to the Indian situation. Loosely, a tribe is a 'social group the members of which live in a common territory, have a common dialect, uniform social organisation and possess cultural homogeneity, having a common ancestor, and shared systems of political organisation and religious pattern' (Chaudhuri 1990: vi). As is evident, this definition does not take us very far as it could be applicable to many types of communities.<sup>1</sup> Given the wide-ranging debate in anthropological circles over the very notion of a tribe as well as the tremendous diversity across tribal communities, however, it would be sufficient for our purposes to use the self-definition adopted by the Indian Council of Indigenous and Tribal Peoples (ICITP) in a 1992 symposium: 'peoples whose political and social organisation [is] based primarily on moral binding among kins, real and putative, who [have] a custodial attitude towards nature and [are] outside the *Jati* (caste) *Varna* system' (Roy Burman 2000: 73). This is a characterisation that emphasises the tribal persons' 'extension of self not only to kins' but also to their community including 'the endowments of nature in the territories with which they have a special association through life cycle events and through activities related to the life support system'. Thus, this relationship with the human and natural environment<sup>2</sup> is a defining feature.

As against this self-characterisation, the relevant administrative category for purposes of policy is the Scheduled Tribe. According to the definition given by Article 342 of the 'Constitution of India, the Scheduled Tribes are the tribes or tribal communities or part of or groups within tribes and tribal communities which have been declared as such by the President by the public notification'<sup>3</sup> (Government of India 1998-99: 31).

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<sup>1</sup> And indeed, such confusion was widespread during the early years of British rule when all of India's

<sup>2</sup> This is roughly what Savyasaachi (1998: 27) describes as the tribals' 'forest universe'. Savyasaachi goes on to stress the importance of the unique tribal work culture as opposed to the industrial work ethic as a source of identity for tribal communities.

<sup>3</sup> For a detailed transcription of and commentary on the Constituent Assembly debates on the Fifth and Sixth Schedules, see Savyasaachi (1998).

Further, certain areas were declared as 'Scheduled' under the Fifth and Sixth Schedules of the Constitution and subjected to special administrative arrangements for the protection of tribal communities. The criteria for declaring any territory as 'Scheduled' adopted by the sub-committee of the Constituent Assembly included: (1) preponderance of tribal population; (2) the stage of advancement and degree of assimilation; and (3) to a slightly lesser extent, the susceptibility of these areas to special administrative treatment. A somewhat modified basis was, however, recommended by the Commission for Scheduled Areas and Scheduled Tribes, 1960 (also known as the Dhebar Commission) emphasising preponderance of tribals in the population (50 per cent), compactness and reasonable size, underdeveloped nature of the area and marked disparity in economic standards of the people. However, nowhere in the Constitution have 'tribes' been defined, and therefore the updating of lists of Scheduled Tribes and Scheduled Areas has been an on-going administrative exercise since 1950.

In the Sixth Schedule Tribal Areas in the States of Assam, Meghalaya and the Union Territory of Mizoram, Autonomous District Councils and Regional Councils were constituted with powers to make laws for management of land, forest, shifting cultivation, appointment or succession of chiefs or headpersons, inheritance of property, marriage and divorce, social customs and any matter relating to village or town administration. The Fifth Schedule was initially made applicable only to the states of Madras, Bombay, West Bengal, Bihar, Central Provinces and Berar, United Provinces and Orissa.

It was in 1976 that the Fifth Schedule was extended to cover tribes living in the states of Madhya Pradesh, Bihar, Orissa, Rajasthan, Gujarat, Maharashtra and Himachal Pradesh (Sharma 1995). However, administrative laxity and parochial political considerations have continued to dominate, as in parts of Andhra Pradesh, and in West Bengal, Karnataka, Kerala and Tamil Nadu, many regions of tribal concentration are still not scheduled.

The 2001 Census enumerated the total population of the country as more than 1 billion, out of which the population of Scheduled Tribes was 84.3 million, constituting 8.2 per cent of the total. India is by this count, home to more tribal people than any country in the world, exceeded only by the continent of Africa taken as a whole. However, there are many claims that several ethnic communities should qualify as Scheduled Tribes (STs), but have not been officially recognised. The Indian Constitution recognises 461 ethnic groups as STs, but according to one estimate, the figure could be as high as 635<sup>4</sup>.

This is a significant number in absolute terms, but certain other aspects of tribal populations in India are equally noteworthy. Tribal communities are dispersed in most parts of India, except in the states of Haryana, Jammu and Kashmir, and Punjab, and the Union territories of Chandigarh, Delhi and Pondicherry. Chaudhuri (1990) identifies six major regions of tribal concentration, as follows:

1. *North-eastern region*: In the mountain valleys and other areas of north-eastern India, covering the States and Union Territories like Arunachal Pradesh, Assam, Manipur,

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<sup>4</sup> See Sille Stilden et al (ed.) (2006).

Meghalaya, Mizoram, Nagaland and Tripura live tribes like the *Abor, Garo, Khasi, Kuki, Mismi, Naga*, etc.

2. *Himalayan region*: In the sub-Himalayan regions covering parts of North-Bengal, Uttar Pradesh and Himachal Pradesh live tribes like *Lepcha, Rabha*, etc., mostly belonging to Mongolian racial group.
3. *Central India region*: In the older hills and Chotanagpur Plateau, along the dividing lines between peninsular India and the Indo-Gangetic basin, live many tribal communities like the *Bhumij, Gond, Ho, Oraon, Munda, Santal*, etc., covering the States of Bihar, Orissa, Madhya Pradesh and West Bengal and mostly belonging to Proto-Australoid racial stock.
4. *Western India region*: Covering the States like Rajasthan, Maharashtra, Gujarat, Goa, Dadra and Nagar Haveli live a number of tribal communities, the most important of them being the Bhil, racially belonging to the Proto-Australoid group.
5. *Southern India region*: Covering the States of Karnataka, Andhra Pradesh, Tamil Nadu and Kerala, in the Nilgiri Hills and converging lines of the Ghats live the *Chenchu, Irula, Kadar, Kota, Kurumba, Toda*, etc., having Negrito, Caucasoid, Proto-Australoid or mixed physical features.
6. *Island region*: Covering Andaman, Nicobar and Lakshadweep Islands live a number of small tribes like the Andamanese, *Onge, Sentinelese*, etc.

(Chaudhuri 1990: viii, x)

However, Shah *et al* (1998) underline the importance of the fact that ‘in most areas of tribal concentration, except the North-East, Dadra and Nagar Haveli and Lakshadweep, tribal people constitute a minority of the population of the region’ (Shah *et al* 1998: 142). Further, ninety-two per cent live in states/Union Territories where they form less than 25 per cent of the population (Shah *et al* 1998: 144). In all ten states with the highest absolute numbers of tribal people, tribals are consistently in a minority. This has serious repercussions for their political bargaining power.

The sheer diversity of Scheduled Tribes is another barrier to their political mobilisation. According to the 1981 census, there are more than 700 tribes in India. Numerically, the three largest tribes are the *Gonds, Bhils* and *Santals*, with population ranging from 3 to 5 million each. Other large tribes are the *Oraons, Meenas, Mundas, Khonds, Bodos, Kolis* and *Hos*. At the other end of the spectrum are tribes like the Great Andamanese, which comprise less than 50 individuals.

## STATUS AND PROBLEMS OF TRIBES IN INDIA

Tribal people share disproportionately with other disadvantaged groups most of the common burdens of poverty. The Planning Commission's estimates of poverty, based mainly on consumption flows, indicate that the proportion of persons below the poverty line among Scheduled Tribes over years

continues to be substantially higher than national average. The figures for 1993-94 and 1999-2000 provide an illustration of this gap, and also show that poverty is declining at a slower pace among tribal population than the rest of the country.

|          | 1993-94 |       | 1999-2000 |       | Percentage Change |           |
|----------|---------|-------|-----------|-------|-------------------|-----------|
| Category |         |       |           |       | (Col 2-4).        | (Col 3-5) |
|          | Rural   | Urban | Rural     | Urban | Rural             | Urban     |
| (1)      | (2)     | (3)   | (4)       | (5)   | (6)               | (7)       |
| Total**  | 37.27   | 32.38 | 27.09     | 23.62 | (-)10.18          | (-)10.04  |
| STs      | 51.94   | 41.14 | 45.86     | 34.75 | (-)6.08           | (-)6.39   |
| GAP      | 14.67   | 7.48  | 18.77     | 11.13 | (+)4.10           | (+)3.65   |

Note: \* Includes ST population.

Source: Perspective Planning Division, Planning Commission, New Delhi.

The poverty status of tribal populations reflects in their low food security status, with worrying levels of hunger as shown by a few large sample surveys conducted in recent times. A study by the Centre for Environment and Food Security (2005) found that out of a total of 1000 sample tribal households from 40 sample villages in Rajasthan and Jharkhand surveyed for this study, a staggering 99 per cent were facing chronic hunger. The data gathered during this survey suggests that 25.2 per cent of surveyed tribal households had faced semi-starvation during the previous week of the survey. This survey found that 24.1 per cent of the surveyed tribal households had lived in semi-starvation condition throughout the previous month of the survey. Over 99 per cent of the tribal households had lived with one or another level of endemic hunger and food insecurity during the whole previous year. Moreover, out of 500 sample tribal households surveyed in Rajasthan, not a single one had secured two square meals for the whole previous year.

Similarly a diet and nutrition survey of the tribal populations living in the Integrated Tribal Development project (ITDP) areas, in the States of Kerala, Tamil Nadu, Karnataka, Andhra Pradesh, Maharashtra, Gujarat, Orissa and West Bengal was done during 1985-87. A repeat survey was carried out during 1998-99 among tribal population living in the same ITDP areas and also in Madhya Pradesh to assess time trends in food and nutrient intake, nutritional status as assessed by anthropometric indices of nutritional status and prevalence of nutritional deficiency signs.

A comparison of data between the two surveys in tribal population showed that over time there has not been any improvement in the food and nutrient intake, but actually a steady decline. The tribal population is more under nourished and chronically hungry than their rural counterparts.

| Age-group              | Cereals & Millets |         | Pulses  |         | Foodgrains |         | Decline in consumption DURING 1985-99 (per cent) |
|------------------------|-------------------|---------|---------|---------|------------|---------|--|
|                        | 1985-87           | 1998-99 | 1985-87 | 1998-99 | 1985-87    | 1998-99 |  |
| 1-3 years              | 187               | 155     | 13      | 14      | 200        | 169     | 15.5   |
| 4-6 years              | 276               | 224     | 18      | 18      | 294        | 242     | 17.7   |
| 7-9 years              | 334               | 282     | 21      | 18      | 355        | 300     | 15.5   |
| 10-12 years boys       | 408               | 335     | 23      | 19      | 431        | 354     | 17.9   |
| 10-12 years girls      | 373               | 333     | 22      | 20      | 395        | 353     | 10.6   |
| 13-15 years boys       | 465               | 405     | 24      | 21      | 489        | 426     | 12.9   |
| 13-15 years girls      | 463               | 392     | 24      | 21      | 487        | 413     | 15.2   |
| >16 years males        | 521               | 518     | 29      | 23      | 550        | 541     | 1.6  |
| >16 years NPFL females | 454               | 404     | 29      | 21      | 483        | 425     | 12.0   |

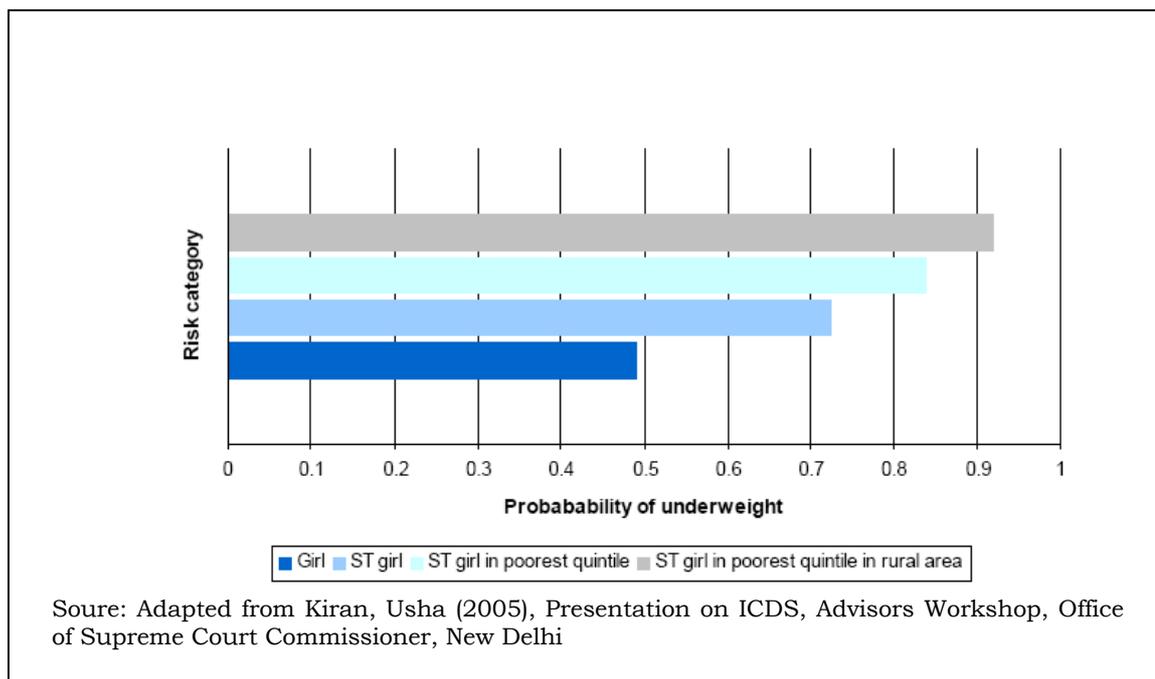
Similarly, health indices among tribal children also reflect lower health status than rest of the social groups. The table below shows that infant mortality rate, under-5 children mortality and percentage of children under-weight are higher in tribal population than overall population.

| Indicators       | Infant Mortality/1000 | Under 5 Mortality/1000 | children under weight (per cent) |
|------------------|-----------------------|------------------------|----------------------------------|
| India            | 70                    | 94.9                   | 47                               |
| Scheduled Tribes | 84.2                  | 126.6                  | 55.9                             |

*Source: Ministry of Tribal Affairs, Annual Report 2005-06, GoI.*

The health vulnerabilities within the tribal groups further depends on gender and poverty status and is more severe in primitive tribal groups. The figure below points out the under weight situation of girl child, which becomes worse when a girl child belong to the tribal population and further worsens when the tribal girl child belongs to the poorest categories.

**Figure 1**  
**How the probability of being underweight increases for girls in increasingly vulnerable positions**



Further, a higher proportion of the Scheduled Tribe population (32.69 per cent) engaged in agricultural wage labour as compared to the general population (25.74 per cent), indicating the livelihood vulnerability of tribal peoples and the problems caused by land deprivation (described below) and dependence on marginal, low-productivity land.

Tribal people also suffer deprivation with regard to a crucial source of human capital — education. For example, in 2001, as against the national average of 64.80 per cent, the literacy rate of Scheduled Tribes was around 47.10 per cent. More strikingly, around 65 per cent of Scheduled Tribe women are illiterate. Though the disparity in literacy rates as well as enrolment rates have declined over years, with improvements in gross enrolment ratio (class I-V), the gap continues to be substantial in these indicators, as shown in Table 4 and Table 5:

| Census years | General |       |        | Scheduled Tribes |       |        |
|--------------|---------|-------|--------|------------------|-------|--------|
|              | Total   | Male  | Female | Total            | Male  | Female |
| 1991         | 52.19   | 64.20 | 39.19  | 29.60            | 40.65 | 18.20  |
| 2001         | 64.80   | 75.30 | 53.70  | 47.10            | 59.20 | 34.80  |

Source: Registrar General of India

| Levels/ Year        | General population |       | Scheduled Tribes |       |
|---------------------|--------------------|-------|------------------|-------|
|                     | Total              | Girls | Total            | Girls |
| I- V (6-11 Yrs)     | 95.4               | 93.1  | 98.7             | 92.3  |
| VI-VIII (11-14 Yrs) | 61.0               | 56.2  | 48.2             | 40.8  |

Source: Ministry of HRD, Selected Educational Statistics, 2002-03

Persistence of high poverty, chronic hunger, low health and education status is a cumulative outcome of this chain of exploitative factors, in the cycle that produces and reproduces the pauperisation of tribal communities. Whereas chronic indebtedness causes alienation of tribal communities from their entitlements (land, forests, minerals, water) and pushes them further into debt bondage or distress migration, the policy regime forces them to be displaced from their native dwellings for projects or as forest encroachers. In addition, the agricultural policies of the State that aim at rapid production enhancement have resulted in shifts from traditional agricultural practices, leading to enormous erosion of the survival strategies of tribal people, with consequent devastation in fragile tribal economies. A small shift in local agro-climatic conditions impacts in a total damage of the crop, and in the absence of fallback livelihood means like forests, renders tribal communities defenseless with a total loss of control over their lives and livelihoods, leaving it its trail unconscionable levels of chronic hunger.

The cumulative impacts of over two hundred years of pauperisation processes on the already fragile socio-economic livelihood base of the tribals has been devastating – ranging from land alienation on a vast scale to hereditary bondage. The misuse of legislative and policy measures to exploit and subjugate the tribals, rather than to safeguard their rights, have broken their spirit. The only place where they have been able to survive is where they have been assimilated - where they have stopped being themselves.

In the process of internal colonisation of forested regions inhabited by tribal people, an ultimately near-fatal blow was the introduction of the legal regimes of private property to replace age-old practices of community ownership, and individual access mediated by community assessment of individual needs. Free access to communally owned forest lands for agriculture by settled or shifting

cultivation modes gave way to rights of cultivation requiring individual land titles. The cumulative fate of private land ownership has been the massive and steady transfer of lands previously held by tribal communities and cultivators into the hands of non-tribal outsiders. This process of expropriation has continued unabated, especially since the turn of the century, in all regions of the country in which agricultural and forest lands were held by aboriginal populations. Despite the enactment of laws in several states to protect tribal landowners from such exploitation, tribal land alienation has continued at a disastrous pace - both through loopholes in the law, and in direct contravention of it.

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<sup>5</sup>. The access of tribal people to forests for their livelihoods has shrunk both because forests themselves have shrunk, and because the regulatory regime continues to restrict tribal people from collecting and processing non-timber forest produce for their livelihoods. Shifting cultivation has also been severely restricted. The most important livelihood option of the tribal today is settled agriculture. However, as tribal cultivators are systematically deprived of their cultivable holdings by non-tribal people and even by government itself, they are reduced to assetless destitution.

The Department of Rural Development, Ministry of Rural Areas and Employment, Government of India commissioned in 1997-98 a number of state-specific studies of the problem, and reports are available with the Government of India from Bihar, Andhra Pradesh, Madhya Pradesh, Gujarat, Rajasthan and Maharashtra<sup>6</sup>.

The reports (unpublished) paint a grim and disturbing picture, which confirm that massive alienation of tribal lands continues in tribal regions in all parts of the country. The magnitude of the problem can be assessed in the Andhra Pradesh report for instance, from the fact that today non-tribals own more than half the land in Scheduled Areas of the state. This figure is 52 per cent in Khamman district, 60 per cent in Adilabad district and 71 per cent in Warangal district. It may be noted that these are official figures based on land records, and would not include 'benami' holdings in the name of tribals, held by non-tribals.

The continuing gravity of the problem in Madhya Pradesh has been assessed by the Census, which reveals that 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. Similar empirical evidence is available from other states as well.

These studies commissioned by the Government of India have revealed the causal chain that leads to this state of affairs and confirmed that the fundamental reason for tribal land alienation is the fragile,

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<sup>5</sup> To an extent, this phenomenon of tribal land alienation is universal in tribal regions worldwide, because of the powerful and predatory assault by the wider drive towards 'civilisation' on their traditional social organisation.

constantly shrinking economic base of the tribals. Their traditional skills in the gathering of forest produce lost significance with the introduction of state ownership of forests, so that from food-gatherers they were reduced to wage-earners or encroachers. Private property in land extinguished the erstwhile right of tribal communities to free access to land in consonance with their needs. Settled agriculture brought with it its inevitable linkages with credit, inputs and markets, rendering the tribal even more dependent and vulnerable.

As tribal people have an innate fear based on bitter past experience of banks, cooperative institutions and other government sources of credit; they prefer the predictability of moneylenders despite usurious interest rates, because they are much less impersonal and do not have bewildering opaque processes before they sanction their loans. In any case, most banks and cooperative institutions are unwilling to provide consumption loans, and moneylenders are thus the only sources of consumption credit.

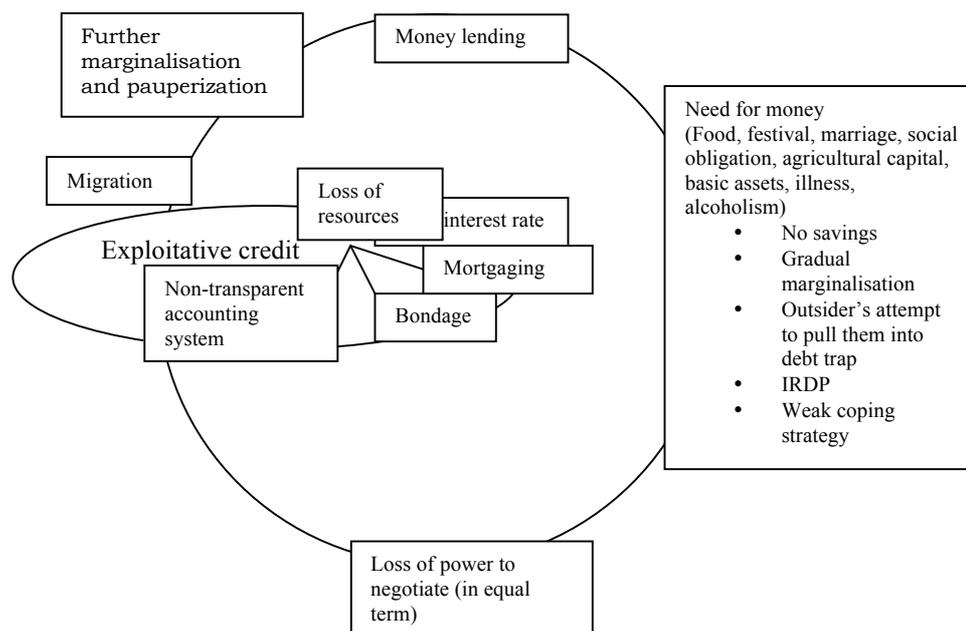
A combination of these factors leads to an extreme dependence on moneylenders on the part of the tribals, keeping them in perpetual debt and resulting in the mortgage and ultimate loss of their land. Though this phenomenon is common enough, another particularly tragic outcome of this indebtedness is the phenomenon of bondage, wherein people pledge their person, and sometimes even 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 practice of bonded labour is known by different names in different regions. In Rajasthan, it is called *Sagri*; in Andhra, *Vetti*; in Orissa, *Gothi*; in Karnataka, *Jetha* and in Madhya Pradesh, *Naukri Nama*.

Chronic indebtedness is the fundamental cause of tribal land alienation. Except for the great redemption law during the emergency, the legal instruments to safeguard tribals against the exploitative moneylending system and usury is weak. Moneylending in tribal areas prevails at the most exploitative terms and causes massive alienation of tribal land, and therefore chronic hunger and distressed migration of tribal communities.

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<sup>6</sup> Mimeo.

**Figure 2**  
**Moneylending & chronic indebtedness:**



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. Authorities responsible for regulating the sale of tribal lands to non-tribals have been found to frequently collude with non-tribals to defraud tribal landowners. The same collusion has deprived tribals of their rights to land in times of land settlement, or implementation of laws giving ownership rights to occupancy tenants.

In addition, it is estimated that some 50 million persons have been displaced since 1950 on account of various development projects, of which more than 40 per cent are tribals. These projects include large irrigation dams, hydroelectricity projects, open cast and underground coal mines, super thermal power plants and mineral-based industrial units. In the name of development, tribals are displaced from their traditional habitats and livelihoods with little or no rehabilitation, and are rendered destitute, bewildered and pauperised by the development process<sup>7</sup>. A.K. Roy (1982) poignantly describes the case of Jharkhand:

Darkness in the midst of light is Jharkhand... The area contains almost all the steel plants — Bokaro, Rourkela, Jamshedpur, all the power plants of the Damodar Valley project and the Hirakud Dam of Orissa. There is no dearth of development, but only at the cost of the people there. Industries displace them, dams drown them, afforestation starves them.

(quoted in Shah 1990: 135)

<sup>7</sup> For an in-depth analysis of the impact of big dams on vulnerable tribal populations, see Mander (1999) (mimeo).

Apart from a water policy that rests on the pivot of big dams, state policy on mining has also worsened the internal colonisation of tribal populations. Massive mining and industrial projects have displaced tribal cultivators from their lands and irrevocably disrupted the social fabric of their lives. This social upheaval, in the context of the Bailadila Iron Ore Mines in Bastar, is vividly described by Srivastava:

After the establishment of the project, business contractors, labourers, technicians [started] coming to the area... vast area both barren and fertile attracted the outsiders and they established themselves on both sides of the road passing through the village Badebachelli... allied industries and market centres were also set up... a *bania* (non-tribal) sells commodities of day to day need to the tribals and acts as a moneylender... any tribal who is not in a position to repay his debt loses his land to the money-lender... the land along the road is no longer in the possession of the tribals. The outsiders are further encroaching on the land situated a little bit in the interior both for cultivation and habitation... in Badebachelli village 2027 acres of land belonging to tribal cultivators have been officially permitted to be sold to non-tribals... but legal alienation of tribal land is not even one-tenth of the rate of illegal alienation... The thatched huts of the tribals are slowly and gradually being replaced by the pucca (brick) tiled house of the outsiders.

(Quoted in Shah 1990: 135)

In these large mining projects, tribals lose their land not only to the project authorities, but even to non-tribal outsiders who converge to these areas and corner both the land and the new economic opportunities in commerce and petty industry. Even wage employment for local tribals is rare. Shah points out, 'In Chotanagpur area, though the tribals constitute more than 50 per cent of the total population, there are not more than 5 per cent of them in the industrial working force. In some of the large firms like TISCO, Jamshedpur and Bharat Coking Coal Ltd., Dhanbad, the tribals employed are less than 5 per cent' (1990: 135). As Anand (1993) puts it 'Development for the nation has meant displacement, pauperization, or, at its very best, peonage for the tribals'.

### **SOCIAL DISINTEGRATION, COMMUNALISATION AND MILITANT VIOLENCE**

The result of these intermeshing cycles of exploitation is not merely the systematic and sustained immiseration of tribal communities. In most contemporary tribal communities in India, one can observe the painful tearing apart of social and cultural moorings. Homans (1950) describes social disintegration is a condition 'marked by a decline in the number of activities in which the members of a group collaborate, by a decrease in the frequency of interaction between these members, and by a weakening of the control exercised by the group over the behaviour of individuals' (quoted in Mann 1980: 33).

As a result of such disintegration, the majority of tribal people are trapped in anomie or normlessness, and some in profound despair. Verrier Elwin spoke of a 'loss of nerve' among certain Central Indian tribes, S.C. Roy of 'a loss of interest in life' among the *Birhors* and the *Korwas*, and J.H. Hutton of 'physical decline' among the Andamanese (Mann 1980: 33). There are symptoms of this also in the high degrees of pathological alcoholism observed in tribal areas which has replaced the traditionally joyous social drinking, and in the growing fissures in tribal value systems of integrity, mutual respect and harmony with nature.

Tribal communities have also been affected from within. Indeed, there is documentation of increasing stratification within traditionally tribal communities. As long as these communities were relatively isolated, the major divisions were horizontal (between clans) rather than vertical<sup>8</sup>. However, in their close encounters with the caste Hindu civilisation, some tribes became Sanskritized and absorbed themselves into the hierarchical caste-system, regarding other tribes as inferior. Many tribes have also begun to practice untouchability. For instance, a *Kabirpanthi Bhil* would be unwilling to accept a girl for marriage from (or even food prepared by) *Shambh Dal Bhils* and from the non-*Bhagat Bhils*. Gender relations have also worsened with the assimilation (Mann 1980: 36).

One of the gravest more recent threats that the already dispossessed tribal people face is from this growing communalisation of tribal communities and regions in many parts of central India. Already dispossessed, from their lands, forests and traditional ways of life - a politics based on hate is dividing them and causing even greater violence, dispossession and distress. They are being alienated from their traditional ways of life and culture by religious and communal organizations of different faiths. They are also being drawn in as foot soldiers in the larger battle of hate launched by communal parties and organisations.

There are many recent signs of success in infecting tribal communities with the sectarian virus. Years of work by religious fundamentalists have succeeded in driving a deep wedge between Hindu and Christian tribal communities in parts of Central India. The RSS, the national headquarters of whose tribal programme, the Banwasi Kalyan Ashram, is located in a Christian missionary stronghold in the remote district of Jashpur in Madhya Pradesh, has sought to persuade Christian tribals to 'return to Hinduism', in a militant '*ghar vapasi*' (home-coming) campaign. The resulting sectarian hatred erupted in 1999 to capture international headlines, with the murder of Australian missionary Graham Staines and his two small sons in a remote tribal settlement in Orissa, allegedly by tribal mobs. Tribal communities have in this way been drawn into campaigns of aggressive religious militancy as pawns, ironically by a 'civilisation' that excluded them for centuries.

There are reports of sporadic violence and a systematic demonisation of Christian adivasis in states like Rajasthan, Gujarat, Madhya Pradesh, Chatisgarh, Orissa and Maharashtra. These include attacks on nuns and churches, vicious propaganda against Christianity as an alien and anti-national faith,

aggressive and violent opposition to conversions to Christianity and the work of missionaries in education and health services, and the creation of an ever-widening rift between Christian and non-Christian adivasis. The tracts occupied by adivasis or tribal people (termed by Hindutva organisations as vanvasis or forest dwellers) in many states of central India are now over-run by a large network of Sangh organisations. They are encouraged by these organisations to join as part of pan-Indian Hinduism, and to 'return' to the fold of Hinduism to which they allegedly belonged, and from where they had strayed because of the so-called fraudulent inducements extended by Christian missionaries.

What may seem like innocuous religious organisations and teachers that do not have an overt agenda of hate (such as the Gayatri Parivar, Swaminarayan and Swadhyaya movements, and Asha Ram Bapu and Morari Bapu) are often forerunners of Sangh organisations. Their inroads aimed at advancing Hindu beliefs and rituals among the adivasis seem to lay the stage for their subsequent transition to militant Hindutva. Their methods of spreading Hindutva begin first with schools, with single teacher schools, adivasi hostels and Sangh schools, run by organisations like Seva Bharati and Banvasi Kalyan Ashram. The other method is through popularising Hindu gods and goddesses and modes of worship and ritual, including Ram, Hanuman, Shiva, Ganesh and Durga. Christian missionaries by and large do not preach hate, although they too pull adivasis away from their roots and ways of life.

The reasons for the rapidly growing popularity and influence of communal parties and organisations (whose support base remains the exploiting classes of traders, moneylenders and landlords) is probably an intense feeling of betrayal by Congress politics, as indeed much of civil society action, that has been unable or unwilling to resist their precipitous oppression and dispossession, and instead they have often been indifferent or even covertly complicit in these processes. Growing class differentiation among adivasis also provides the basis for the adoption of Hindutva, as upward mobility is often associated with sanskritisation, which then paves the way for 'hard' Hindutva. It is observed that most political and social organisations are doing little to resist the rapid communalisation of adivasis. Many secular organisations contribute to the growing religiosity that we have observed, providing the necessary ground for the advance of communal Hindutva. Most others, including progressive organisations and social movements, pursue their own selected sphere of work, and are unable to summon the time and commitment required to counter the communalisation of their constituencies. The role of secular political parties and their governments are even more suspect. Many are sympathetic with efforts to prevent the advance of Christianity, therefore many Sangh educational institutions are supported by Congress governments.

The long history of penetration and profound disruption of tribal communities, the sustained and frequently brutal expropriation of tribal wealth, and the resultant anger and despair, have also resulted in a situation in which many regions with tribal concentration are immersed in an unending cycle of

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<sup>8</sup> Anand (1993) presents a comprehensive discussion of these processes of vertical integration along class lines and the emergence of a tribal elite.

violence. All states in the North-east of India have been ripped apart by separatist, and sometimes sectarian, violence.

In many stretches of forested Central India, it is the People's War Group and an array of other Naxalite Marxist-Leninist outfits<sup>9</sup>, which continue to channelise tribal anger into violent resistance to state power. These regions are caught in a hopeless cycle of mutually retaliatory state and Naxalite violence: so-called police 'encounters' in which Naxalites are killed in cold blood by police personnel, and the regular killing by Naxalites groups of alleged 'police informers' and police personnel often through powerful land mines<sup>10</sup>. In some pockets, state authority and control have shown signs of near-collapse, and Naxalites have described these as 'liberated areas'. There is evidence that in areas of Naxalite influence, petty exploitation, especially by government functionaries, has been contained. However, it is still unlikely that there is a clear and wide mandate within the local tribal communities for the perpetuation of violence either of the Naxalites or the state. Meanwhile, as violence from both sides nonetheless continues unabated, there seems no light at the end of the tunnel for local tribal communities condemned to survive in the crossfire.

### **EVOLUTION OF TRIBAL POLICIES IN INDIA**

In the initial years after Independence, there was at senior policy levels a degree of sensitivity to the central but chronically unresolved dilemma of tribal development policy, or isolation or assimilation. The most common metaphor to illustrate this dilemma is that of road construction: are these roads for development, to enable doctors, drinking water rigs and agricultural scientists to reach the difficult and remote regions of tribal habitation? Or are roads built actually to enable the predatory combine of traders, forest contractors, moneylenders, liquor manufacturers, politicians and government functionaries to access these regions to expropriate their forest and mineral wealth, agricultural land, produce and women?

After Independence, the senior political leadership in India particularly Prime Minister Nehru, sought to define the contours of a progressive and sensitive tribal policy that steered clear of the excesses of both 'isolationism' and the implied civilisational arrogance of 'assimilation'. Nehru maintained that tribal people 'possess a variety of culture and are in many ways certainly not backward. There is no point in trying to make them a second rate of copy of ourselves'. In seeking to bring to these communities the

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<sup>9</sup> The word Naxalite derives from Naxalbari, a nondescript small town in West Bengal, which gained fame for being the first outpost of an extreme left movement aiming at armed insurrection to overthrow the state. An elected Marxist government, bitterly opposed to the Naxalite movement, has been in power in West Bengal for around two decades, and the Naxalite movement is now almost moribund in the state of its origins. However, it remains a powerful challenge to state authority in many tribal pockets of Andhra Pradesh, Madhya Pradesh, Maharashtra, Bihar and Orissa.

<sup>10</sup> In the state of Andhra Pradesh where this cycle of state and Naxalite violence is possibly most entrenched today, a group of respected 'concerned citizens' have attempted to engage both the state and the Naxalities in a dialogue to end this violence. The success of the group has been to engage the Naxalites in the democratic debate, but violence from both sides continues unabated. See the report of the Committee of Concerned Citizens (1998).

benefits of health education and communication, he said that ‘one must always remember, however, that we do not mean to interfere with their way of life but want to help them to live it. The tribal people should be helped to grow according to their genius and tradition’ (quoted in Mann 1980: 27).

This unusual sensitivity derived partly from the influence that anthropologists like Verrier Elwin had on the design of India’s strategies of tribal development. Elwin stressed that in designing development programmes for tribals, their special cultural strengths must be respected and nurtured:

Here is a section of humanity simple, tough and hardy, convinced of the wholesomeness of its own life. Their existence has depended during the centuries of their forest mountain, existence, upon the principles of challenge and response. Rigours of climate have not driven them away from their home lands nor obliged them to abandon their way of life. But they do not suffer from the obstinacy of adherence to the beliefs. They do not suffer from the obstinacy of adherence to the beliefs. They are open, frank and willing to change when faith and reason convince them that change is necessary.

(quoted in Ratha 1990: 111)

Elwin however was himself attacked, for instance during a debate on Excluded Areas in the Legislative Assembly in 1936, for his alleged primitivism; for attempting to freeze the tribal people ‘in a state of barbarism’; and perpetuating their ‘uncivilized conditions’. Decades later, he clarified that he had, no doubt, advocated a policy of *temporary* isolation for certain small tribes when India was under British rule. However he pointed that this was not to keep them as they were;

but because at that time the only contacts they had with the outside world were debasing contacts, leading to economic exploitation and cultural destruction. Nothing positive was being done for their welfare; national workers were not admitted into their hills; but merchants, moneylenders, landlords and liquor-vendors were working havoc with their economy and missionaries were destroying their art, their dances, their weaving and their whole culture.

(quoted in Ratha 1990: 106)

The search for an appropriate middle path of integration, falling between the two extremes of isolation and assimilation, was concretised in Nehru’s landmark *Panchsheel* (or five-fold path, a term derived from Buddhist philosophy which stresses the appropriateness of avoidance of extremes, always seeking the golden mean). The five principles that he advocated for tribal development and integration were enumerated as follows:

1. People should develop along the lines of their own genius and we would avoid imposing anything on them. We should try to encourage in every way their own traditional arts and culture.

2. Tribal rights in land and forest should be respected.
3. We should try to train and built up a team of their own people to do the work of administration and development. Some technical personnel from outside will, no doubt, be needed, especially in the beginning. But we should avoid introducing too many outsiders into tribal territory.
4. We should not over-administer these areas or overwhelm them with a multiplicity of schemes. We should rather work through, and not in rivalry to their own social and cultural institutions.
5. We should judge results, not by statistics or the amount of money spent, but by the quality of human character that is evolved.

(quoted in Mann 1980: 28)

The Scheduled Areas and Scheduled Tribes Commission, headed by U.N. Dhebar (1960) later endorsed and elaborated this policy of integration as attempting ‘not to disturb the harmony of tribal life and simultaneously work for its advance, not to impose anything upon the tribals and simultaneously work for their integration as members and part of Indian family’ (quoted in Ratha 1990: 140).

Despite such progressive policy rhetoric, with the singular exception of the North-East Frontier Agency (NEFA), the policy of integration was not implemented with any notable success in tribal India. For the opening up of the hitherto isolated, and strategically sensitive, tribal highlands of NEFA, a committed and trained group of exceptional officers were grouped into what was designated as the Indian Frontier Administrative Service. They closely interacted on a day-to-day basis with Nehru and Elwin. Elwin advised that, ‘integration can only take place on the basis of equality: moral and political equality’. In a definitive biography, Guha paraphrases Elwin’s advice to civil servants serving in tribal regions – ‘They must know the people, he said, know what stirred them, moved them, energized them. When on tour they must drink with the tribals... drink, he added significantly, from the same *collective* bowl.’ (Guha 1999: 258, emphasis writer’s own.)

It is significant that NEFA, now designated Arunachal Pradesh, remains the state in the north-east that is least convulsed with militancy. Its ‘tribesmen now are able to interact with the outside world with confidence and ease. Incidentally this is the only state in India where certain tribes have attained a hundred per cent level of literacy ’ (Ratha 1990: 106-07).

However for the greater part, tribal policy failed to extend protection to tribal communities from exploitation and expropriation, nor did it create conditions for their development according to their ‘own genius’. In the next sections, we will observe the main elements of tribal development policy in India, and the actual performance of each of these elements.

## MAJOR ELEMENTS OF TRIBAL POLICY

### Legislative protection

The importance of protecting the interests of vulnerable tribal communities was incorporated into the Indian Constitution. Article 46 of the Constitution enjoined upon the state ‘to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and...protect them from social injustice and all forms of exploitation’.

There has been an array of federal and state-specific legislations for the protection of tribal communities and regions from exploitation since Independence. Some of these laws are specifically designed for tribal people, such as state-specific laws to prevent the transfer of tribal land to non-tribals. Some are relevant for both Scheduled Tribes and Scheduled Castes, such as the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Some apply to all disadvantaged groups, of which tribals would generally be expected to constitute a significant proportion. These would include state-specific laws to regulate moneylending<sup>11</sup> and to prevent usury, the Bonded Labour System (Abolition) Act, 1976, the Minimum Wages Act, 1948 and the Child Labour (Prohibition and Regulation) Act, 1986<sup>12</sup>.

It is beyond the scope of this paper to review the implementation of social justice legislation in India. It would be sufficient to note the persistence of tribal land alienation, usury, atrocities, bondage, child labour and low wages, suggests that the array of progressive legislation has failed to extend adequate protection to tribal people. The reasons for this failure are that law by itself cannot protect vulnerable groups and people. The legal system is always notoriously weighted against the poor, more so tribals for whom the entire legal system is an alien implant. In the absence of redistributive and other political strategies to empower tribal communities, the law by itself would inevitably have had a limited impact.

We may illustrate this with the performance of one set of laws which are designed specifically for the protection of tribal people, namely laws to prevent transfer of land from tribal to non-tribal people. Almost all state governments have passed laws regulating the transfer of land from tribal landowners to non-tribals. Most such laws require that prior permission the Collector be obtained before such transfers are permitted. Examples of such laws are section 13A of the Bombay Land Revenue Code, section 165(6) of the MP Land Revenue Code, the Bihar Scheduled Areas Regulations, the Andhra Pradesh Scheduled Areas Land Transfer Regulations, and so on. In some states, like Andhra Pradesh and Madhya Pradesh, there is now a total ban on transfer of land from tribals to non-tribals in scheduled areas.

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<sup>11</sup> Moneylending may be defined as credit transactions undertaken with or without interest, with or without mortgage of moveable or immovable property, by an individual or institution not registered by the RBI. Such an individual or institution is the moneylender.

<sup>12</sup> For details on the protective measures instituted and implemented by the Government, refer to Mander (forthcoming).

A second major set of legislations have been enacted to review transfers of land which occurred in the past from tribals to non-tribals, and to restore land to the original tribal landowners in case fraud or illegality is established. The strongest such law is section 170 (B) of the MP Land Revenue Code, 1959. We will look at the experience of the law in Madhya Pradesh, which has the highest concentration of tribal people and the most progressive law in this regard (Mander, forthcoming)

The Madhya Pradesh Land Revenue Code, 1959 contained important provisions under Section 165 (6) to protect tribals from such exploitation, but both through loopholes in the law and in blatant contravention of it, tribal land alienation continued at a disastrous pace. An important study by the Tribal Research Institute, Madhya Pradesh in 1983 concluded that ‘while on the one hand section 165(6) of the M.P. Land Revenue Code (1959) prohibits transfer of land from aboriginals, the later part of the same section permits it under certain conditions... All other clauses in the interest of the aboriginals seem to be overshadowed by this and transfer of the land from the tribal to the non-tribal is a regular feature’.

The study notes that 46.3 per cent of cases in which the Collector gave permission to the tribal landowner to sell land was for the repayment of government loans. The reports states ‘Indebtedness is the main cause of land alienation. Actually what happens in the area is that tribals mortgage their land to non-tribals and take loans... They would then take loan from Government and use it for repayment of the private debts. Having failed to pay the loan due to Government, they apply for permission to sell land which is granted. In fact the sale is to the mortgagagee, while on paper it assumes the shape of innocent transfer for repayment of Government loans’. The study further notes that ‘the quantum of illegal (*benami*) land alienation from tribals to non-tribals is like that part of the iceberg that remains under the surface of water. Seemingly though the quantum of legal transfers is not very much, the incidence of illegal transfers not easily detectable is very high’.

The studies commissioned by the Government of India with regard to other states, referred to in a previous section of this report, also establish that transfers of land from tribal land owners to non-tribals continued despite the various enactments, for a variety of reasons. In most cases, collectors or other agencies responsible for protecting the interests of tribals while regulating such transfers, did not apply their minds to issues of vital importance to the tribals. These include whether or not tribals had any other alternative livelihood, sufficient land for viable cultivation even after sale, whether sufficient price was being paid, whether the sale was actually to enable repayment for usurious loans from a moneylenders etc. Legal transfers also took place through actions for recovery of dues and mortgages, by decrees of civil courts, misuse of provisions for settlement of occupancy tenants, settlement operations etc.

In order to secure redressal and reversal of such systematic subversion of these protective laws, the Madhya Pradesh legislature in 1976, and then in 1980, introduced highly significant amendments in the Land Revenue Code, 1959 to secure belated justice to the dispossessed tribal landowners, particularly through the section 170 (B) of the Code.

There were many powerful elements in this Section 170 (B), some without parallel in any other state. 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 was also debarred in these proceedings. There is also provision for a single appeal to the Collector.

Despite the existence of such a radical piece of legislation for social justice for tribals, its implementation in most districts of the state has not been in consonance with both the letter and the spirit of the law.

Land of which possession has been officially restored to the original tribal landowners forms only 12.65 per cent of the total land under dispute. However given the socio-economic realities facing tribals and their powerful non-tribal opponents, it is unlikely that even after receiving formal legal possession of even this small proportion of their erstwhile lands, tribals would have the local administrative and political muscle to ensure that they would retain possession.

In order to understand the actual experience with regard to the implementation of progressive measures to restore illegally expropriated land in Madhya Pradesh, we rely on two unpublished studies by the Tribal Research Institute, Bhopal (TRI) (1983 and 1987-88), and on the direct experience of this author in supervising the implementation of these provisions in six tribal districts and one tribal division of Madhya Pradesh.

### ***Implementation difficulties:***

Ambiguous and weak-kneed administrative will blocks effective implementation of the progressive legal measures designed to prevent land alienation. This failure operates in many ways. First, in most sub-divisions in the state, cases have not been even initially registered under section 170(B) of the Code. This is in defiance of the mandatory responsibility placed on the SDO to *suo moto* register cases.

The situation is even more dismal with regard to 'benami' transactions, in which land nominally owned by tribal landowners is in practice cultivated by non-tribals. Whereas such cases are common knowledge in any village, they are rarely reported by *patwaris* and other local revenue officers or by the non-official committees that were set up for such local investigation by the state government.

Disposal of cases tends to be slow, and the large majority of cases tend to be decided mechanically in favour of non-tribals. A 1983 study of eight districts by the TRI reported that of the 4118 cases registered in these eight districts, only 1782 or 43.20 per cent cases were decided, of which 1140 cases or 64.5 per cent were decided against the tribals. A close scrutiny of many of the cases decided in favour of non-tribals show that disposal has been frequently in contravention of the law.

Further the 1983 study also revealed that in a majority of cases decided in favour of tribals, they had not secured actual possession because of threats and violence by the non-tribals in possession of the land, along with delays and complicity of local revenue functionaries. The 1987-88 study reported that fresh cases of tribal land alienation have considerably reduced under the impact of protective legislation, but restoration of land already lost is tardy.

***Prolonged litigation and nature of legal system:***

The second set of problems relates to the nature of our legal system which, even in the context of sensitive and pro-poor legislation like the Sections 170 (A) and 170 (B) of the Madhya Pradesh Land Revenue Code, 1959 tends to be strongly weighted against the tribal poor. We have seen how the Code restricts litigation to a single appeal, but non-tribal litigants easily get around this restriction by resorting to revisions which are not barred. However, typically the legal system is systematically misused to harass and tire out tribal litigants, most of whom despair and are weary or pauperised before the almost unending legal battle reaches its conclusion. The restriction on legal practitioners is also generally observed more in the breach, because presiding officers of courts frequently do not wish to alienate the powerful lobbies of the bar.

***Indebtedness:***

We have seen that the fundamental cause of tribal land alienation is chronic indebtedness. No law to protect tribals can be successful unless it is complemented by measures to meet their genuine credit needs, including for consumption, and to protect them from usury.

***Awareness and mobilisation:***

In the last analysis, any measure for social justice can succeed only if the intended beneficiary group is aware of its provisions, convinced about the legitimacy of the protective legislation, and mobilized and organized both to use its provisions, and to enforce its effective implementation. However, these conditions are mostly not fulfilled with regard to the tribal victims of land alienation in Madhya Pradesh. The studies by the TRI have noted and lamented very poor levels of awareness of tribals regarding the measures contained sections 165 (6), 170 (A) and 170 (B) of the Code. The majority of tribal people are not even convinced about the moral legitimacy of these provisions. It has been the experience of this writer that frequently, tribals refuse to apply, or to cooperate with suo moto proceedings, because they believe that to accept restoration of the land would constitute a morally intolerable breach of an agreement made in the past by their elders, even if such an agreement was with an exploitative moneylender. Even when individual tribals are convinced and seek redress, they are powerless as atomized individuals fighting the might of socio-economic and political power, with judicial instruments heavily weighted against them. Only if they combine and seek organized legal

redress, are they likely to succeed. However, this rarely happens. These same problems act as barriers to the implementation of all forms of legislation for the protection of tribal communities.

### **Budgetary and administrative mechanisms**

In order to ensure that special budgetary provisions are made for tribal development, the Constitution itself provides in Article 275 that there 'shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a state such capital and recurring sums as may be necessary to enable that state to meet the costs of such schemes of development as may be undertaken by the state with the approval of Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the Scheduled areas therein to that of the administration of the rest of that state'.

However, contrary to the expectations from some quarters, actual budgetary allocations for tribal development in the first three Five Year Plans were extremely niggardly. 'On an average the government spent Rs. 87.3 million annually on the Scheduled and Denotified Tribes<sup>13</sup> during the period of the first three Plans. The average annual spending, per head, came to as little as Rs. 3.50' (Mann 1980: 29)

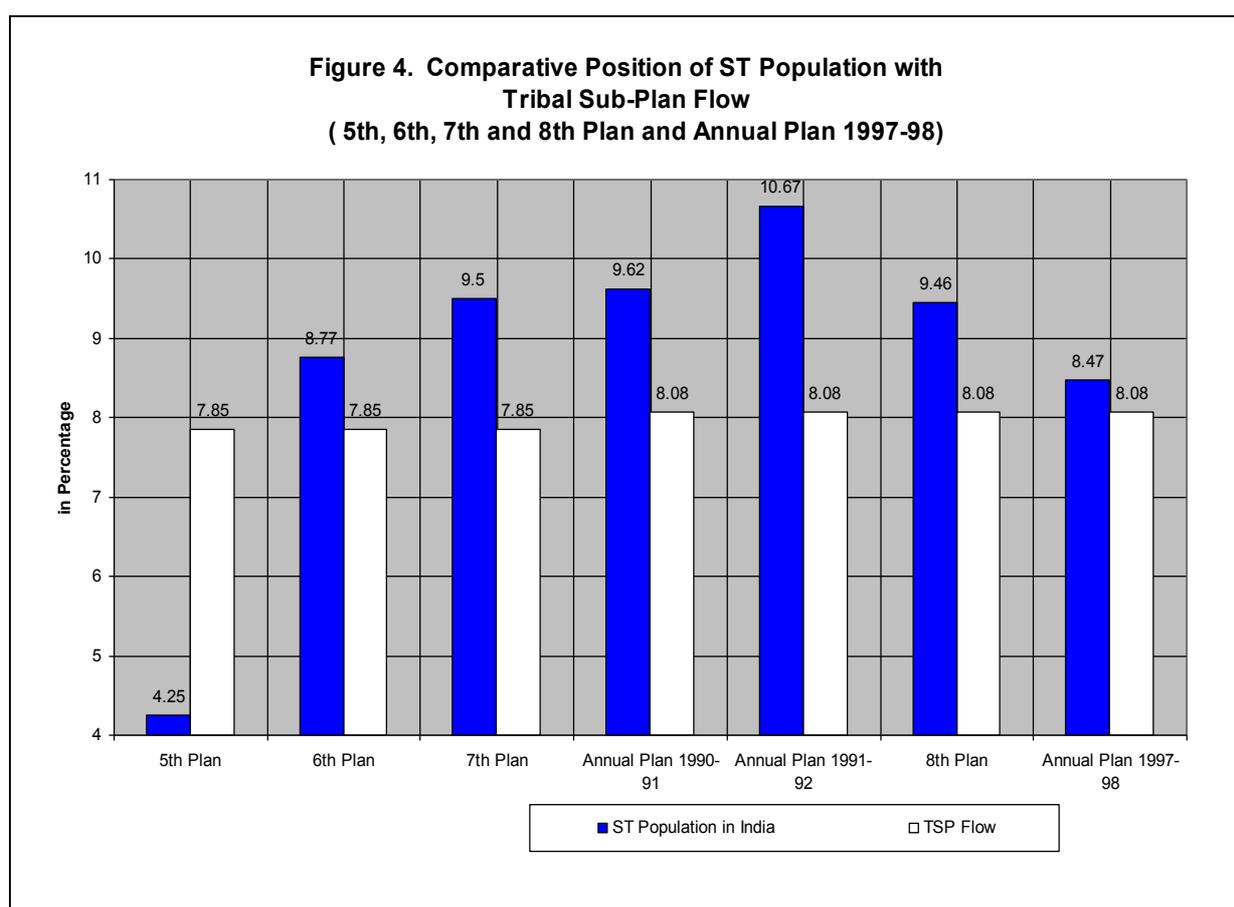
In response to the need to ensure adequate budgetary allocations to tribal people and regions, an extremely important budgetary mechanism was introduced from the Fifth Plan. This was the instrument of the Tribal Sub-Plan (TSP), or the earmarking of separate plan outlays exclusively for the development of STs, roughly in proportion to their population in the country as a whole or the State in question for which the budget was being prepared. For the administration of the TSPs of various States, blocks or groups of blocks with a high tribal concentration (more than 50 per cent) were constituted into Integrated Tribal Development Projects (ITDPs), and various wings of government were sought to be integrated in the ITDPs under the leadership of a senior government functionary.

Modified Area Development Approach (MADA) Pockets were formed in groups of villages having population of 10,000 or more with 50 per cent or more of the population comprising tribals. 252 MADA Pockets were created. In addition, 79 Clusters were also formed for groups of villages having a population of 5,000 or more where STs constitute more than 50 per cent of the population. Apart from this, 75 Primitive Tribal Groups (PTGs) were identified in 15 States/UTs on the basis of pre-agricultural levels of technology and extremely low levels of literacy. The development of PTGs was undertaken through micro projects for these tribes (Government of India 1998-99: 32).

The stated objective of the TSP strategy was to secure budgetary allocations for tribal development at least proportionate to their population, in order to 'bring them (tribal groups) at par with other sections of society and to protect them from exploitation... The TSP strategy is in operation in 18 States, namely

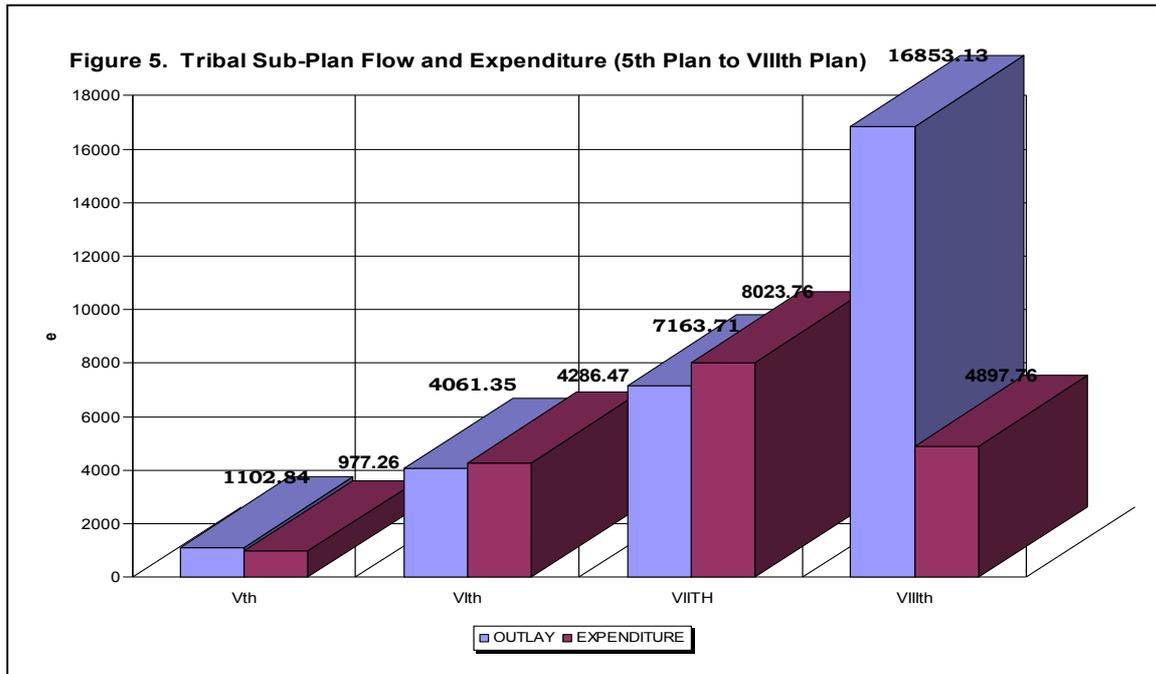
Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal and two Union Territories, namely the Andaman and Nicobar Islands and Daman & Diu' (Government of India 1998-99: 32).

The instruments of the TSP and ITDP did result in the allocation of a greater proportion of budgetary resources to tribal development. Enhanced tribal sub-plan flows and expenditures are presented in Figure 4. Since the Fifth Plan, these have in the context of the Government of India often exceeded the proportion of tribal people to the total population. (Figure 5). Flows to TSP are officially monitored for various departments of the central and state governments<sup>14</sup>.



<sup>13</sup> Denotified Tribes are tribal groups that were designated as criminal tribes during British rule. They suffered extensively from repression, and continue to remain vulnerable in Independent India, because they have not been freed from the stigma of their past.

<sup>14</sup> For a more detailed description of various schemes for tribal assistance as also the TSP, see Planning Commission (2000).



However, there were many limitations to this strategy. Firstly, mere enhancement of budgetary allocations does not lead automatically to enhanced welfare. The implementation of protective measures that do not involve financial outlays may be far more significant.

Moreover, in both central and state governments, the political objective of securing allocations under TSP in proportion to tribal populations was rarely achieved. Even when it was achieved, it was often the result of innovative accounting mechanisms rather than genuine enhancement of outlays on programmes for tribal development. In the Fifth Plan, expenditure on major investments, like industrial and large irrigation projects, was treated as indivisible expenditures and not included under the TSP. However, from the Sixth Plan onwards, many of these expenditures were shown to be for tribal welfare.

In states with high tribal concentration, the bureaucratic ploy frequently resorted to is that described as 'booking' of expenditures to TSP. The unstated purpose appears to be to inflate figures of expenditures for programmes allegedly for tribal welfare, without disturbing the actual balance in favour of other, more powerful mainstream budgetary demands. Expenditures on staff, institutions and general plan expenditures, such as a highway passing through the tribal plan area, are routinely booked to TSP. Even subsidies given to private industry for setting up industrial units in tribal areas are shown as part of the TSP. This is particularly ironic in that projects which have forcibly uprooted and dispossessed local tribal populations are transformed, through such budgetary fictions, to projects that appear to have been for the development of tribal people.

Similarly, the ITDP strategy in most states was a non-starter. Senior functionaries were posted as Project Officers in charge of ITDPs in many states, but they were rarely delegated significant financial or administrative authority over other departments working in tribal areas.

What is needed is that budgetary resources proportional to the tribal population in the state be separated from the overall plan right at the outset. For these resources, treated as a separate pool, genuine TSPs

should be prepared in response to the genuine needs and aspirations of the tribal populations. The TSP should have been aggregated to the ITDPs and MADPs, and plans should emerge from below, by a genuine process of consultation. Only through thoroughgoing decentralisation of funds and authority to sub-district concentrations of tribal people can it be ensured that a just share of national and state budgetary resources are channelised for programmes which meet the felt needs of STs.

### **Educational strategies**

The continuing gap between literacy levels of STs and the general population is shown in Figure 3. The largest proportion of centrally-sponsored programmes for tribal development is related to the single sector of education. This same sector tends to dominate budgetary allocations even in state governments. In states like Madhya Pradesh, tribal education is administered directly by the tribal welfare department and is separate from the education department on the premise that the educational needs of tribal communities are at variance from the needs of the rest of the population.

The major strategies in various tribal states have been the establishment of hostels, scholarships, freeships, mid-day meals, free uniforms, books and stationery, remedial coaching, special coaching for competitive examinations, and vocational training (most successfully and innovatively in the field of computers). Under the major schemes of central assistance, 'the scheme of girls' hostel, which was started in the Third Plan, is a useful instrument for spreading education among Scheduled Tribe girls, whose literacy still stood at 18.19 per cent as per 1991 census against the general female literacy of 39.23 per cent' (Government of India 1998-99: 35). A similar scheme was introduced in 1989-90 for the construction of boys' hostels. The Ashram School scheme was launched in 1990-91 with the objective to extend educational facilities through residential schools for Scheduled Tribe students. A new scheme for Schedule Tribes Girls Low Literacy pockets was introduced in 1993-94 and implemented through non-governmental organisations:

Districts having literacy rates for Scheduled Tribe women of less than 10 per cent as per 1991 census are covered. 136 Districts in 11 States of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal are covered under this scheme. The female literacy among certain primitive tribal groups is also very low. The scheme of educational complexes covers such primitive Tribal Groups also. The Ministry of Social Justice & Empowerment [Government of India] provides full assistance for setting up of the education complexes.

(Government of India 1998-99: 35, 36)

The strategy of special tribal hostels and residential schools makes eminent sense, because tribals reside traditionally in extremely small and dispersed settlements in difficult and remote areas. Therefore, the logistics of serving each of these settlements with day schools are unmanageable. The

solution has been found in locating residential tribal schools and hostels even in the deep forest interiors, although quality and basic amenities remain a problem. The amounts paid as scholarship and stipends to tribal students have enabled resource-strapped tribal families to invest in education, even though there is evidence that part of the money is diverted by some families for non-educational purposes.

Tribal hostels and residential schools in remote interiors are notoriously poorly managed, plagued by badly maintained buildings and leakages and delays in payments to students and for purchases. Teachers, if they teach at all, are often poorly motivated and sometimes display prejudices against tribal children. The greatest failing has been in the context of education in tribal schools. The sensitive rhetoric of stated tribal policy of 'integration' and enabling tribal communities to 'develop according to their own genius' is entirely forgotten, as mainstream school curricula are imposed wholesale on tribal schools. The problem is not merely the medium of instruction; again, contrary to stated national policy of enabling children at the primary level to study in their mother-tongue, there are almost no tribal schools in which teaching is conducted in tribal languages. Even more serious is the cultural bias of school curricula, which tends to be urban, upper-caste Hindu in content. Studies have also established patriarchal and communal trends. Even the dedicated Ramakrishna Mission schools in remote regions of Bastar and Arunachal Pradesh, which have been actively promoted by the Indian state, provide high-quality education but of a kind that is exclusively and unapologetically Sankritized Hindu in terms of its cultural moorings, values and idioms. The Christian missionary schools in tribal regions country-wide have equally aimed at assimilation, although into a different cultural ethos<sup>15</sup>.

However, despite all these limitations, education is a growing and powerfully felt need of tribal communities. In the two-decade experience of this writer in tribal regions in the interiors of Madhya Pradesh, the most visible evolution in tribal aspirations even in remote tribal hinterlands and among so-called primitive tribes, has been for education. The attraction is partly for eligibility for employment, particularly in government. However, the major impetus is to acquire skills to negotiate the complex, exploitative external world. The challenge of meeting these aspirations without alienating tribal communities from the roots that sustain them, remains.

### **Self-governance by tribal communities**

In the winter of 1996, without fanfare and in fact largely unnoticed, the Indian Parliament passed what is without doubt the most significant legal measure for tribal people since Independence. Earlier, the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments had inserted Part IX in the Constitution relating to *panchayati raj*, but Parliament consciously excluded Scheduled Areas from the operation of these laws, providing

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<sup>15</sup> The Gandhian Thakkar Bapa, often on the opposite side of the fence from Verrier Elwin with his 'integrationist' approach to tribal policy, was one of the first to advocate modern education for tribals 'to develop a leadership for the tribals in order that they may participate in the political life of the country' (Anand 1993: 12). See Anand (1993) for a wide-ranging study of the role of education in creating such a tribal elite and promoting intra-community stratification in tribal groups.

that it may separately extend these laws to Scheduled Areas with suitable modifications. A committee constituted for this purpose chaired by Dileep Singh Bhuria, MP, recommended wide powers to the *gram sabha* or assembly of all village residents in Scheduled Areas in 1995. The 1996 Act is based substantially on these recommendations.

The underlying premise of the Panchayats (Extension to Scheduled Areas) Act, 1996 (hereafter referred to as PESA) is that tribal communities can be brought back from the brink of economic, social and cultural disaster only if they are restored effective and comprehensive control over their own destinies. Accordingly, this law seeks to create legal spaces and institutions that carry the potential to arrest, and even reverse the sombre recent history of tribal communities.

PESA is unprecedented in that it gives radical self-governance powers to the tribal community and recognizes its traditional community rights over natural resources. Prior to the passage of this Act, laws passed by central and state governments were applied mechanically to tribal areas, even when these contravened traditional tribal practices and institutions. To take an example that we have seen, with the introduction of legal regimes based on private property and state ownership of forests and common property resources, the traditional control of the tribal communities over natural resources broke down, destroying their sustainable livelihood base. Chronic indebtedness to the moneylender, savage land alienation and large-scale migration were the results. Further, alien state institutions like the police and judiciary came to supercede traditional modes of conflict resolution, often with less than successful outcomes.

PESA opened a new chapter in the governance of tribal regions, helping to resolve these enormous crippling distortions, and ending two centuries of resistance of the tribal people to the imposition of formal state institutions.

The *gram sabha*, which is the locus of political power under the PESA, may be no more than a convenient administrative label for the relevant assembly; instead, the law focuses on settlements which the tribal people themselves perceive to be traditional and organic entities. In fact this is the first law that empowers people to redefine their own administrative boundaries. PESA provides that the tribal *gram sabha* so defined would be empowered to approve all development plans, control all functionaries and institutions of all social sectors, as well as control all minor water bodies, minor minerals and non-timber forest resources. It would also have the authority to control land alienation, impose prohibition, manage village markets and resolve internal conflicts by traditional modes.

In one stroke, the Act create a space for people's empowerment, genuine popular political participation, convergent community action, sustainable people oriented development and auto-generated emancipation.<sup>16</sup> In reality, however, since its passage it has mostly remained forgotten in the corridors of power and has not become part of mainstream political discourse. Many state

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<sup>16</sup> For a more detailed discussion of the Bhuria Committee report as well as a critical reading of PESA, see Savyasaachi (1998), who argues that the PESA does not go far enough in advancing genuine self-rule for tribal communities.

governments have passed laws not fully in conformity with the central law. Academics, administrators, policy makers and even parliamentarians remain unaware of it. The tribal communities informed about the provisions of the law greeted it with enthusiasm but found themselves progressively handicapped by the lack of actual preparedness to negotiate development and democratisation in the manner envisaged by the law.

The real danger thus is that the far-reaching changes introduced in the law will remain a dead letter unless they are translated into action and sustained by a process of awareness and capacity building among the tribal communities. There are a number of grave problems that must be overcome if the law is genuinely to transform tribal reality, but it is important to stress that none of these barriers to tribal self-government are insurmountable. We devote the following sections to studying these issues and exploring possible solutions.

### **Financial resources and capacity building**

There is firstly the issue of genuine devolution of financial resources to tribal *gram sabhas*. We have already noted that the TSP strategy has led only to formal devolution to tribal areas. Impoverished tribal communities have no surplus that can be invested in development plans. Development planning by tribal *gram sabhas* can become a reality only if the TSP strategy is modified to ensure genuine devolution of substantial budgetary resources as united funds for tribal *gram sabhas*. The foundations for the groundswell of popular participation in people's planning by *gram sabhas* in Kerala were first laid by the unprecedented decision of the state government to earmark 40 per cent of the state budget for local plans.

The Kerala model also underlines the importance of building capacities and competencies. In Kerala, this was done through a large movement for citizen's education, involving thousands of volunteers. For tribal communities, the challenge of disseminating skills for people's planning is even more formidable, because the institutions, procedures and the entire idiom of these processes of governance are so profoundly alien for a peoples historically excluded and oppressed by these very institutions and processes. The same problems would apply to provisions in the law that subordinate government functionaries like teachers and health workers, to the *gram sabha*.

### **Minimalistic interpretation: the example of MFPs**

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.

Bureaucratic subversion of the letter and spirit of the law has been most visible in the interpretation of that provision of PESA by which *panchayats* at appropriate levels and the *gram sabha* have been vested with the ownership of minor forest produce (MFP). For tribal forest dwellers, the forest department has

been the most visible form of oppression<sup>17</sup>. Enforcement of PESA is perceived as weakening the stranglehold of the forest department, and it is instructive to study the interpretation of PESA favoured by the forest department for its attempts to minimise the department's loss of the control.

Firstly, the forest department states that the power of *gram sabhas* can extend only to forest located within the revenue boundaries of a village. This one provision, if accepted, would nullify the law because no reserved forest, and in most states, no protected forest is located within a revenue village. The spirit of the law is clearly to extend ownership to the *gram sabha* to MFP from forests located in the vicinity of the village which they traditionally access. In fact, in the case of Joint Forest Management (JFM), the Madhya Pradesh government vested the village forest committees with authority to manage forest falling within a radius of five kilometres of the boundaries of the village. A similar dispensation would be eminently suitable in the case of PESA.

Secondly, MFP has been defined to exclude cane and bamboo. This is contrary to the botanical definition of MFP which is 'that part of a tree that can be sustainably harvested without damage to the survival of the tree'. More significantly, it denies access to poor tribal artisans to two types of MFP on which their livelihoods are most critically dependent. On the other hand, we have already observed how state policy has subsidized bamboo to the extent that these are supplied at 1 to 5 per cent of their market rate for private industry.

However, the greatest semantic contortions are reserved for the forest department interpretation of the concept of 'ownership' of MP by the *gram sabha*. It is stated that ownership does not provide the *gram sabha* the right to take any decisions related to stewardship, management or sustainable harvesting of MFPs. Contrary to a whole body of empirical evidence from the national and international experience of JFM and community control of forests, it is claimed that the exercise of 'ownership' of MFPs by *gram sabhas* in this sense, would inevitably lead to a destruction of forests. Therefore, 'ownership' as provided for in PESA is reinterpreted to mean the right to net revenues from MFP, after retaining administrative expenses of the forest department.

### **Mediating tradition for adjudication<sup>18</sup>**

One of the most thorny and problematic, and arguably also the most potentially radical and liberating provisions of PESA is section 4 (d) which lays down that 'every *gram sabha* shall be competent to safeguard and preserve... the customary mode(s) of conflict resolution'. This terse but dense formulation envisages the establishment – or restoration – of alternate institutions for resolution of the civil and criminal disputes of rural people. It further seems to require that these institutions should be based on tradition and custom, and should derive both legitimacy and sustenance from the *gram sabha*.

<sup>17</sup> One piece of anecdotal evidence, recounted by Verrier Elwin, is particularly revealing. When queried about his idea of paradise, a tribal described it as miles and miles of forest, but without a forest guard!

<sup>18</sup> The remainder of this sub-section is derived substantially from Mander and Naik (1999).

The rationale of this provision is that the formal contemporary systems for resolving conflicts – the courts, the police, jails and statutory law – stand increasingly discredited in the countryside. They are seen to be heavily weighed against the poor, ridden by corruption, delays and mystification. They have substantially lost legitimacy as reliable institutions for ensuring cheap, quick, unbiased and transparent justice for rural people, especially those belonging to disadvantaged groups.

The PESA formulation opens significant windows of opportunity for tribal peoples to construct alternate community-based structures for delivery of justice. However, before these opportunities can be realized, a host of extremely difficult questions need resolution.

A literal interpretation of the PESA formulation seems to suggest that restoration of customary modes of conflict resolution in itself would ensure more reliable justice. However, any such uncritical faith in tradition and custom as intrinsically superior vehicles for justice delivery cannot be supported empirically. Untouchability and witch-hunting are both traditions, and the latter is particularly firmly grounded in many tribal areas and notorious for suppressing female assertion.

The law somewhere also presumed the survival of 'homogenous', 'egalitarian' and 'altruistic' tribal communities, but tribal societies have undergone vast changes. Cultural transformation has followed the drastic mutation of their material conditions. As we have already seen, the egalitarian internal organisation of tribal societies has also in many cases been distorted, particularly in relation to women. Alcoholism and other social symptoms of the degradation and exploitation of tribal societies have resulted in tribal women bearing nearly all the burdens of balancing the household economy. The breakdown of traditional control over consumption of alcohol has increased male irresponsibility, drained domestic resources and encouraged greater domestic violence. Ironically, women have become partners in their own oppression, as it is mainly women who manufacture illicit liquor. Although rape is still uncommon in tribal societies, domestic violence is rampant and the community has ceased to intervene, regarding this as a 'personal matter'. Women are equally terrorized by witch-hunting, because every woman is a potential witch who can be stoned to death. Women have virtually no right to property. They are also excluded from any traditional modes of conflict resolution, even when they are parties to the dispute. Tribal societies have also begun to practice untouchability, and oppress weaker tribal groups.

*Panchayat* literally means five persons sitting together to adjudicate, but *panchayats* have often performed this function as a bastion of male dominance, excluding women, young people, the poor and socially disadvantaged groups. For example, *Warli* tribals traditionally resolve disputes by inviting the two parties to the dispute to nominate any two persons as *panches* to adjudicate. The four nominated persons in turn nominate a fifth *panch*. This seems an excellent mechanism, except for one critical rider - traditionally only men can be nominated as *panches*, even where women are parties to a dispute. In the discussions this writer held in various *Warli gram sabhas* in the Thane district of Maharashtra, women consistently stated their preference for the formal systems of conflict resolution even when acutely

conscious of the limitations of these systems, very probably in a reaction against the severe gender bias of traditional systems.

Our first problem is that whereas the need for alternate local community-based institutions for justice delivery is fully acknowledged, the extent to which these institutions must be rooted in tradition is unclear. The need to seek, unravel, and understand traditional modes is also admitted; however, the yardstick of contemporary universal standards of justice and equity must also test these modes. There is need for far greater understanding, based on empirical research, about the principal traditional modes of justice adjudication in major tribal groups in Schedule V areas. Are these traditional systems accessible to all sections of the community? Can they deliver quicker, cheaper and more reliable justice, when compared to the formal judicial system? Answers to these questions must be framed with particular reference to women, dalits and other disadvantaged groups within tribal communities.

Would localized community-based institutions for justice delivery function in the best interests of the disadvantaged, in village communities often riven by profound, bitter and ancient divisions of class, caste, gender and age? If such institutions are in fact established, what safeguards should be introduced to secure the interests of the relatively powerless within the community?

Another set of problems relates to the procedure for a rural collective to adjudicate. The language of PESA requires that the *gram sabha* be competent to safeguard the customary mode of dispute resolution. This seems to suggest firstly that detailed procedures would be laid down by the *gram sabhas*, drawing from tradition, and not spelled out in detail in the law itself. Whereas this interpretation has the merit of enabling local wisdom to flourish, definite broad safeguards are required to ensure conformity with universal principles of justice and to protect weaker groups.

The PESA formulation also suggests that the *gram sabha* as a collective would not necessarily adjudicate disputes. It would only lay down procedures, and monitor proceedings. However, the establishment of local committees to adjudicate is fraught with dangers. The Madhya Pradesh *Gram Nyayalaya Adhiniyam*, 1996 for instance, provides for the constitution of *Gram Nyayalayas*, by the unanimous nomination of seven members by the *Janapad* (Block) *Panchayat*. Political nominees would pack a nominated body of the kind envisaged in the Madhya Pradesh Act, and a committee of political nominees would be very likely be no more than an extension of the local power elite, but lacking the legitimacy of either tradition or of the rule of law. People disadvantaged by caste, class and gender, would be severely disabled in securing justice in such a situation.

Some of the other major issues on which the law must be unambiguous include the following:

- On which type of issue should *gram sabhas* be empowered to adjudicate? Should their jurisdiction be voluntary or mandatory? If the two parties desire to access alternate institutions, which would prevail? What would be the procedures and powers to summon witnesses, secure justice and enforce decisions? What would be the powers, if any, of the *gram sabha* to award punishments?
- There are also other issues related to the interface between the community-based and formal systems. Would their jurisdiction be concurrent or exclusive? Which agency/agencies would be

bound to implement the decisions of the *gram sabha*? What powers would the *gram sabha* enjoy for the enforcement of its decisions? What would be the appeal mechanisms?

In summary, it is true that rural communities have faced monumental difficulties in securing justice in their interface with formal institutions for dispute adjudication and justice delivery. However, great care needs to be exercised in replacing the established institutions with others less tested, even when these are intended to be more reliable vehicles for speedy and impartial justice, especially for disadvantaged sections of rural society.

### **Gram Sabhas and control of tribal land alienation In Scheduled V areas<sup>19</sup>**

PESA attempts to redress the consistent failure of formal state structures to deliver justice to dispossessed tribal land-owners, by requiring state governments to specifically endow *panchayats* at appropriate levels and *gram sabhas* with powers to prevent alienation of land and to take appropriate action to restore land unlawfully alienated from a tribal. However, these substantial powers are to a certain extent hampered in their reach by the fact that procedures are not clearly spelt out.

Despite this lacuna, the state legislatures of Andhra Pradesh, Gujarat, Himachal Pradesh, and Maharashtra have resolved to amend their laws regulating land transfers from STs in Scheduled Areas to appropriately empower *panchayats* and *gram sabhas*. However, detailed amendments are still awaited nearly three years after the passage of PESA. The Maharashtra government has enabled *gram sabhas* and *panchayats* only to make recommendations to the Collector in this matter (Srivastava 1999).

The Madhya Pradesh legislature has amended its Land Revenue Code, 1959 with a slightly more detailed formulation, as follows:

If a *gram sabha* in the Scheduled Areas finds that any person other than members of an aboriginal tribes, is in possession of any land of a *Bhumiswami*<sup>20</sup> belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to whom it originally belonged and if that person is dead to his legal heirs;

Provided that if the *gram sabha* fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer who shall restore the possession of such land within three months from the date of receipt of the reference.

(Quoted in Mander and Naik 1999: 6)

<sup>19</sup> For fuller details, see Mander and Naik (1998)

<sup>20</sup> landowner

The Madhya Pradesh formulation has the merit of ensuring much clearer compliance with PESA. It places direct powers with the *gram sabha* for restoration of land illegally alienated from a tribal land-owner by a non-tribal. It also places a duty on a senior revenue authority - the SDO - to restore possession within 3 months if the *gram sabha* fails in this. However, for this provision to become operational, far more detailed instructions regarding the procedures to be followed by the *gram sabha* for the exercise of such quasi-judicial authority would be required. There are also, as we shall observe, other aspects of regulating tribal land-alienation from which the *gram sabhas* are still excluded.

As stated earlier, PESA requires state governments to specifically empower *panchayats* at appropriate levels and *gram sabhas* in Scheduled Areas with powers to prevent alienation of land and to take appropriate action in this regard. These powers are clearly intended to extend to (a) regulating the transfer of land from STs to non-tribals; (b) detecting instances of land unlawfully alienated from STs; and (c) powers to restore illegally alienated land to the original tribal land-owners. Let us consider each of these in turn.

The regulation of land transfers from STs to non-tribals involves firstly decisions regarding whether any particular sale of agricultural land from STs to non-tribals may be permitted at all. Many state governments have now imposed a blanket ban on such transfers in Scheduled areas. However, in states where such transfers are permitted with the consent of superior revenue authorities (Collector or SDO), the concurrence of the *gram sabhas* should be made mandatory before the revenue authority is empowered to extend permission. Such regulation also implies ensuring that a non-exploitative price is paid to the tribal with an actual transfer of the amount (and not, for instance, adjustment against some old loan from a moneylender). Here again, the *gram sabha* must concur that the price being offered is adequate and just, and payment by cheque in the joint names of male and female heads of the family wherever applicable— be made in the presence of the *gram sabhas*.

Regulation by the *gram sabha* also implies interventions to provide relief in the event that permission for sale by a Scheduled Tribe is refused. The *gram sabha* and *gram panchayat* may be encouraged and assisted to establish alternate community based modes of securing ready credit, like a community village fund or *gram kosh*, for times of distress and for productive purposes. In addition, the *gram panchayat* may assist the tribal to secure credit from a co-operative or nationalized bank.

We move now to the second type of the power that we suggested that *panchayats* and *gram sabhas* need to be equipped with in this matter viz., detection of instances of land unlawfully alienated from STs. The *gram sabha* cannot be expected to detect this on an on-going basis unless land records are placed directly under their control. Exploitation in matters of land titles in rural India is sustained, at least in part, by the notorious monopoly of *patwaris* or village accountants over land records. They have exercised uninterrupted tyranny over rural India for centuries, because they typically function unencumbered by any kind of transparency or accountability requirements. Transfer of control over land records to the *gram sabha*, or at least to the village *panchayat*, as has been recently accomplished in Madhya Pradesh, would enable a breach in this long tradition of official tyranny. For instance, a

provision that the record of rights — which lists each plot of land and the recorded owner — be read out and approved by the *gram sabha*, would enable detection of *benami* land or that held by force illegally by non-tribals. In addition, the requirement that all court rulings for the restoration of land illegally expropriated from tribals by non-tribals, would enable *gram sabhas* to detect instances of non-compliance with court orders, which remain legion in most states.

The third kind of legal empowerment envisaged for tribal *gram sabhas* is to restore illegally alienated land to tribal landowners. One procedure may be as follows. Both sides are invited to adduce evidence, verbal or documentary, to establish their claims before the *gram sabha*. Any other member of the *gram sabha* with knowledge of the case would also be allowed to give evidence. It would be mandatory for the *patwari* to give testimony. There would be full rights of cross-examination, but no party would be allowed representation by a legal practitioner.

In the end, the *gram sabha* would take a decision either unanimously or by majority opinion, established by show of hands. The relevant laws would have to be amended to explicitly state that the decision of the *gram sabha* in this regard would have the same weight in law and the same binding quality as the decision of the lowest revenue court. In the event of an appeal by the non-tribal, it would be mandatory for the court to ensure compliance with the decisions of the *gram sabha* to restore land to the tribal before considering the appeal. Also, if the *gram sabha*'s directions to restore land to the tribal are not complied with, the *gram sabhas* or the tribal concerned may inform the court, and it would be mandatory for the court to ensure the restoration of the land to the tribal within 3 months.

### **Gram Sabha and moneylending**

Section 4(m) (v) of the PESA lays down that the ‘... State Legislature shall ensure that the *panchayats* at the appropriate level and the *gram sabha* are endowed specifically with...the power to exercise control over money lending to the Scheduled Tribes.’

This is a provision with enormous potential for the protection of tribals from grave and continued pauperisation. Tribal people in all regions in India remain extremely vulnerable to rampant exploitation by moneylenders, and laws aimed at preventing usury have had an extremely limited impact in extending genuine protection to them. PESA seeks to correct this by placing powers directly with tribal *gram sabhas* to regulate moneylending.

However, a survey of state laws reveals that most state governments have not so far adequately amended existing laws, nor have they passed fresh laws or administrative instructions in order to bring these in conformity with PESA. The amended Panchayats Acts of Andhra Pradesh, Himachal Pradesh and Orissa make provisions for control of moneylending by *gram panchayats* or *gram sabhas* ‘as may be prescribed’. However, the state governments have not issued detailed guidelines or amended the relevant laws accordingly. The Madhya Pradesh government is said to be considering an

amendment to its laws related to moneylending, but this has not yet been passed by the state legislature. The governments of Gujarat and Maharashtra have amended the Bombay Moneylenders Act, 1946 to make consultations with the *gram sabha* mandatory before the issue of a license to a moneylender (Srivastava 1999). However this cannot be considered an adequate compliance with either the letter or spirit of the law, because it does not empower *gram sabhas* to intervene in any way to provide relief in the event of a breach of the conditions of license. A more effective procedure may be as follows:

In any Schedule V area, any person or institution that proposes to engage in moneylending with any resident of a village, must apply first for permission to the senior revenue court of the Sub-Division Officer (Civil) (the SDO) in whose jurisdiction the village is located. The application must indicate full details of the terms under which credit is proposed to be offered (including rate of interest, mortgage if any, enforcement mechanisms and outcomes of default, the purposes for which credit will be offered, and full details of the proposed moneylender).

The SDO will confirm that the proposed terms of credit are in conformity with the relevant laws at that time. Those applications that are in conformity will be forwarded for consideration to the next meeting of the relevant *gram sabha*. The *gram sabha* will consider the application, especially with regard to the following:

- Do the village residents require credit of the kind being offered?
- Are the terms of credit being offered considered reasonable by the *gram sabha*?
- Does the track record of the moneylender suggest that he or she is fit to be entrusted with the responsibility for moneylending?

Only if the *gram sabha*, after these deliberations, recommends the grant of license, may the moneylender be granted license by the village *panchayat*.

In case there is the allegation of any breach of any condition of license by the moneylender, the person affected, or any other resident of the village, may file a complaint to this effect to the village *panchayat*. It would be mandatory for the secretary of the village *panchayat* to ensure that the complaint is included for consideration in the next *gram sabha* meeting. It would be mandatory also for the moneylender to be given notice to appear with all concerned records in the next meeting of the *gram sabha*. In case the moneylender refuses to appear or fails to produce the relevant documents, the *gram sabha* may inform the SDO who after confirming these facts, would be authorized by law to issue a non-bailable warrant against the moneylender, to ensure appearance.

The *gram sabha* would elect a four-member committee, including one elected representative who is a Scheduled Tribe, one village-level government official, and two other village residents of whom at least one must be a woman. This committee would then proceed to examine the moneylender, the recipient of credit, the complainant, and any witnesses who may be produced. They would also examine the records. All these examinations and investigations will be completed in the presence of

the *gram sabha*. The committee will then pass a summary verdict. The verdict will include decisions whether there was indeed a breach of license by the moneylender, the relief including recovery of cash or mortgaged property, and suspension or cancellation of license. The *gram sabha* must also lay down a time limit in which its decision must be complied with. The *gram sabha* will also conclude whether the moneylender has also been guilty prima facie of any offence under the Indian Penal Code (IPC) or Atrocities Act.

In the event of any failure to comply with the decision of the *gram sabha* in the prescribed period, the village *panchayat* would be bound to inform the SDO of this breach in writing. The SDO would be bound by law to ensure compliance within three months, including recovery and restoration of property wherever applicable. Apart from this, if the *gram sabha* had concluded that prima facie there was an offence under the IPC, the village *panchayat* would be bound to file an FIR with the police station of appropriate jurisdiction.

A similar procedure would apply in the event of any allegation of moneylending being transacted with any member of the *gram sabha* by a person or institution without any valid license.

However, as in the case of moneylending, nowhere have state governments made any such move towards achieving a powerful interpretation of PESA in accordance with the spirit of the law, and with a genuine will to create legal spaces to enable tribal communities to combat long years of exploitation by moneylenders.

### **Restoring some tribal rights to forests: Controversies over the Forest Bill**

The process of internal colonisation that accompanied, and subsequently survived, imperial rule is best illustrated by the state-led resource emasculation of forests, the most important endowment of tribal communities for survival and livelihood. According to Lynch, ‘there are about a 100 million forest dwellers’ and ‘another 275 million who depend on the forest produce for their livelihood’ (1992, quoted in Saxena 1996). Though exact figures are not known, a substantial proportion of these would be tribal people.<sup>21</sup>

Yet, considerations of maximising state revenues from forests have dominated forest policy from colonial times. Community control over forests was no longer recognised legally, and the state became the ultimate owner and custodian of forests. Forest dwellers became ‘encroachers and

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<sup>21</sup> In terms of occupation, there remain today only few tribal communities - like the *Birhors* of Madhya Pradesh, *Chenchu*, *Yenadi* and *Yeribula* of Madhya Pradesh and the *Onge*, *Jarawa* and *Sentinelese* of the Andaman and Nicobar Islands - which are entirely dependent on forestry and food-gathering. Even they barter these products for other goods in village markets. Most forest-dwelling tribals continue to depend on the collection of NTFPs as a major supplementary source of livelihood. An estimated million tribal cultivators engage in slash and burn shifting cultivation, covering 26.7 million acres of land. This system is known variously as ‘*jhum*’ in the North-eastern states, ‘*poor*’ in Andhra Pradesh, ‘*dahiya*’ or ‘*bewar*’ in Madhya Pradesh and ‘*komar*’ ‘*bringu*’ or ‘*gudia*’ in Orissa. Today settled (but usually low productivity) dryland subsistence agriculture is the predominant source of livelihood for the large majority of tribal people. Cottage industries are the mainstay of small, scattered tribes, such as a bamboo and cane artisans.

trespassers,' as monoculture and clean felling for timber extraction dominated forestry operations. The conversion of complex forest into genetically simplified industrial plantations add to state revenues and benefit industries, but a wide range of species critical to the survival and well-being of tribal forest dwellers are depleted severely and sometimes even lost forever.

The government has created new rights of industrialists to forest produce at highly subsidised prices. Saxena (1996) provides instances of industries being supplied bamboo for the manufacture of papers at 1 to 5 per cent of the auction rate, whereas purchase at auctions is the only source of bamboo for tribal artisans, such as the *Koya* of Orissa. State monopolies over collection of NTFPs have also followed the same pattern of maximising corporate interests and state revenue, at the expense of the subsistence of large populations of tribal collectors. In contrast to deregulation in the corporate sector, irrational barriers to the processing of non-timber forest products (NTFPs), even for the manufacture of brooms, leaf plates and *agarbattis* abound<sup>22</sup>.

In an affidavit to the Supreme Court of India on 21 June 2004, the Government of India made a very significant admission - that 'the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified'. This marked a historic departure from the colonial perspective that has characterised the state regulations of forests, which regards forests as preserves of nature that necessarily should ideally be devoid of human habitation; and which regards the state as the sole legal and natural monopolistic guardian of the country's forest wealth.

The Indian Forest Act, 1927, the Wild Life Protection Act, 1972, and the Forest Conservation Act, 1980, are all based on the common principle that any human 'interference' in a forest ecosystem would lead to its destruction. This legal perspective ignores that tribal groups also form an integral and natural part of this ecosystem, both surviving from the forest and at the same time preserving it. Indeed, just prior to its admission to the highest court of the land, the Indian government had ordered the eviction of all forest encroachers on 3 May 2002, leading to the expulsion of around 300,000 impoverished cultivators from over 152,000 hectares in just four months. Mass protests and destitution finally persuaded the Government of India to introduce the Scheduled Tribes (Recognition of Forest Rights) Bill in Parliament on 13 December 2005.

The Bill states that it seeks 'to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes...' These include the rights to hold (live on, and cultivate) forest lands, but denies the right to hunt. It also casts duties on the forest dwelling tribal communities to protect forests.

The Bill has led to a highly polarized and sometimes bitter debate between 'tribal rights' and 'environmental' lobbies. Whereas the former extended a cautious welcome to the long belated initiative of Government, the latter warned of cataclysmic consequences to forests and the environment in India, and particularly the survival of tigers and other large mammals. However, it is

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<sup>22</sup> For a detailed exposition of the adverse impact of forest policy on forest dwellers, see Saxena (1996).

dangerous to pit the interests of forests as irreconcilably opposed to those of forest dwellers, as extreme positions on both sides of this debate openly or tacitly succeed in doing. The truth is that if forests are destroyed, no single group will suffer more than indigenous people themselves.

From the environmentalists, a more moderate and nuanced position has been articulated by Shekhar Singh, who feels (in an unpublished note circulated by him) that the Bill is ‘a good one that addresses a long felt need’. However, he identifies some of its major weaknesses, listed below:

1. It covers only scheduled tribes, although many other marginalized communities, apart from tribals, have historically been dependent on forest lands and resources. Besides, restricting this act to only the tribals would also create major implementation problems, as tribals and non-tribals co-exist in and around forest areas, using and sharing the same resources. If the tribals are suddenly given rights over these resources there is a likelihood of social tension and even violence.
2. The inclusion of national parks and sanctuaries into the definition of ‘forest land’ (section 2(f)), demarcating areas that should become ‘core areas’ (S. 2(b)), is bound to create major problems both for the wildlife and for the people involved. To allot provisional rights to people living in core areas for the next five years, as proposed, would be disastrous for wildlife. The major battle is not against poaching but against habitat destruction and shortage of resources. Human communities compete for the same grazing land and water, for their livestock, that wild animals need for their survival. Many endangered species are wary of human beings and would abandon areas frequented or inhabited by humans, thereby further reducing their range, and subsequently their chances of survival. As Shekhar Singh states: ‘It is for this reason that the Parliament of India had ordained that a small part of the country, currently less than 2%, should be kept inviolate, as national parks and core areas of sanctuaries. We owe it to the future generations of human beings, and to all the other races of living things that share this planet with the human race, to respect this very wise decision of the Parliament of India, and not reverse it now, when the danger is even greater’. He suggests that this provision be deleted. Instead, a national task force should be constituted, which, within a time frame of 12 months, would rationalise the boundaries of all national parks and sanctuaries:

- a. Excluding from these, national parks and sanctuary areas that have little or no ecological value, but large human populations (there are many such areas).
- b. For those areas where there is both significant ecological value and the existence of human populations, assessing whether any other contiguous areas with similar ecological value are available, and have less or no human population. If so, these could then be included in the national park or sanctuary, and the area of similar value but with large populations, excluded.
- c. Where areas with significant ecological value have no alternatives, identifying these as areas from where the resident populations need to be rehabilitated, with all due compensation and consideration.

The areas so excluded from national parks and sanctuaries, would then be treated like all other forest lands, with people entitled to rights, as per the law. Moderate voices such as these, which try to reconcile the interests of both forests and forest dwellers, should be heeded.

Those who defend the Bill argue first that the initiative of the Government of India is in full conformity with the international normative framework for the preservation of the rights of indigenous people<sup>23</sup>. The international commitments of protecting biodiversity, indigenous and local communities require that the Governments should: ‘Protect and encourage customary use of biological resources in accordance with traditional’ sustainable use and practices as well as ‘indigenous organizational structures’ and legislation intended to promote them as ‘consistent with the needs and views of indigenous and local communities, comprehensive and enforceable’.<sup>24</sup> Countries should ‘cease all ... involuntary sedentarization of mobile’ indigenous livelihood and ‘recognise collective and customary rights of mobile’ livelihood - of gathering of forest produce, shifting cultivation, etc - and their ‘mobility as a vital livelihood system... relevant for conservation’ by ‘customary laws and dynamic scales of land use’ and having ‘seasonal and temporal rights’ instead of settled land ownership.<sup>25</sup>

The international commitments on the sustainable use and conservation of forest biodiversity with respect to indigenous and local communities require that the Governments should ‘respect, preserve and maintain... practices of indigenous and local communities’ by their ‘continued stewardship... of... lands and waters traditionally occupied or used by them’<sup>26</sup>. Countries should ‘protect the... practices of these communities relevant to the conservation and sustainable use of biological diversity, taking into consideration customary laws’ and ‘legislation governing access to genetic resources that also

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<sup>23</sup> These arguments have been excellently martialled by indigenous rights Finnish activist Ville-Veiko in an informal note circulated in Sept 2006 (mimeo)

<sup>24</sup> UN Convention on the Biological Diversity, Article 10 (c)-(d) and CoP Decision VII/16, paragraphs 21 and 25

<sup>25</sup> Vth IUCN World Parks Congress, The Durban Action Plan, Outcome 5 and Recommendation 27 on Mobile Indigenous Peoples and Conservation and its paragraphs 3 a, b, e and f

requires the free prior informed consent of affected indigenous and local communities; recognition of customary systems of land tenure<sup>27</sup>. Thus the structures of traditional/indigenous understanding and governance of the local environment and its life should be sustained - also through 'innovative and equitable laws and policies for... strengthening incentives for community-based forest management' as recommended by FAO Asia-Pacific Forestry Commission<sup>28</sup>. The Bill is in line with international commitments and principles on Protected Areas, according to which Governments should support 'indigenous and local communities ... in formulating their own' approach for conserving the areas, 'lands and waters traditionally occupied or used by them'.<sup>29</sup> 'Indigenous peoples, their lands, waters and other resources have made a substantial contribution to the conservation of global ecosystems. For this trend to continue... protected areas, future and present, should take into account... the interests and needs of indigenous peoples' and need 'consent for and approval by indigenous peoples'.<sup>30</sup> 'Most of the remaining significant areas of high natural value on earth are inhabited by indigenous peoples. This testifies to the efficacy of indigenous resource management systems', 'closely attuned to the natural laws operating in local ecosystems', 'Compared with protected area managers, who control about 6% of the world's land mass, indigenous peoples are the earth's most important stewards'<sup>31</sup>.

Tribal rights activists indeed argue that the proposed cut-off date in the Bill of 1980 and the land ceiling of 2.5 acres do not go far enough. They argue further that conservation critics 'ignore the millennia of peaceful tribal-forest coexistence, choosing to maintain that their very presence will automatically degrade the habitat of the tiger and other wildlife leading to their extinction'. 'Local indigenous forest communities are the most experienced in terms of what kind of human relation to local forest ecosystems can sustain the forest regeneration for centuries. They are thus duly more competent and accountable on how the local forest can be sustainably used and conserved in practice - rather than such modern authority of forest management, which has led to recent degeneration. As modern administration has led to rapid forest degradation, it has not acted competently for conserving the forest and cannot be accountably authorised to displace or restrict the more sustainable indigenous forest life and forest relation of the indigenous local communities. The forest communities are more accountable to save their forests - as their homes and unique sources of their life and culture - than such managers for whom the forests are rather resources to be exchanged to commercial value'. They argue further that tigers also have been able to judge their habitat to survive best in the forest areas of indigenous people - relatively near to their living places - while the expansion of other forms of settlement (agricultural, urban, etc.) or forest plantations have led to the vanishing of the tiger. The

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<sup>26</sup> UN Convention on the Biological Diversity, Article 8 (j) and CoP Decision VII/16, section H and Annex on Sui Generis systems, paragraphs 2-5

<sup>27</sup> CoP Decision VI/10 on article 8(j) and related provisions, paragraph 41 and Annex 1, paragraph 2

<sup>28</sup> FAO 2006/09

<sup>29</sup> CoP Decision VII/16, Annex on Akwé: Kon Voluntary Guidelines, paragraphs 10 a and 12

<sup>30</sup> Vth IUCN World Parks Congress, Recommendation 5.24, Indigenous Peoples and Protected Areas

<sup>31</sup> WWF Statement of Principles on Indigenous Peoples and Conservation, preamble and paragraphs 1-2 and 6-8

recently published most comprehensive new tiger research made it also very clear that ‘translocation of local people out of protected area (displacement/evictions) has been one of the most inefficient measures for tiger protection, together with establishment of "new/upgraded protected area" or tiger "habitat restoration" or enhancement, "captive breeding facility" or "reintroduction of tigers". "Large commercial plantations have replaced a lot of tiger habitat"’.<sup>32</sup>

When indigenous forest dwellers are displaced from the forest by modern forest management, the life and work to which the forest dwellers are brought (to towns, to modern settled agriculture or industries) are more forest-degrading than their indigenous forest life. To protect biodiversity and its sustainable use by restrictions, one should assess how to begin restricting those rights and facilities which are most biodiversity degrading in the long-term, such as the practices and facilities of city-life, industry or settled agriculture, as well as how people can live with the regeneration of the forest, rather than by eliminating the forest through modern habitation, cultivation, industry, etc. Evidence over the years show that the more the forests have been transferred away from the indigenous forest peoples - by modern commercial forest management, settled agriculture, urban habitation, industry, tourism, etc. - the greater their degradation. This would widely displace indigenous forest dwellers forcing them thus often to more urban life, to settled agriculture or industries, which are highly unsustainable compared to the indigenous forest life and:

- Criminalise sustainable forest livelihoods developed over the last 26 years and legitimize massive displacement of the most vulnerable, who have lived sustainably mobile indigenous forest life (gathering forest produce, shifting cultivation or other relatively mobile subsistence).
- Remove the sustainable mobility of indigenous forest life and limit the rights of tribal forest life to a given practice of ownership, commerce orientation and other modern dictates - which have been shown to have a destabilising effect on the carrying capacity of ecosystems and lead to more serious forest degradation.

It is laudable that the Indian government and Parliament have displayed courage in openly accepting the enormous historical injustices meted to tribal people by depriving them of their traditional rights to forest resources that are critical to their survival. At the same time we need to preserve forests for the sake of indigenous people themselves as well as the rest of the world, for inter-species and inter-generational equity. On the one hand, we need to recognize the needs to preserve small ecologically significant land stretches from human interface. However on the other hand, we must not allow the present Bill be trapped in half-hearted technicalities – but go as far as necessary to support forest based survival, shelter and livelihoods of traditional forest dwellers built around forest wealth and lands, and promote sustainable and democratic modes of forest usufruct, protection and development.

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<sup>32</sup> See for example ‘Technical Report’ at <http://www.worldwildlife.org/tigers/pubs.cfm>

**Conclusion**

In conclusion, 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 the form of a powerful and radical recent law, that provides for self-governance by tribal communities. However, so far, the state has forgotten or subverted the interpretation of its own laws. The perils of tribal identity and survival remain as real as ever.

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