

TRIBAL POLICY
Pulling Back From the Brink?

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The Land of Jagtu Gond

Everyday, as he returned to his hut from the fields, Jagtu Gond would pause for a few moments, his gaunt brown body glistening in the evening light, his eyes fierce and intense. Gazing at the stretch of lush green, thirty acres of some of the richest and most fertile land in the area, he would repeat passionately to himself— this is my land, and I will get it back at all costs.

The patwari records, however, did not bear out Jagtu's claim. The land stood in the name of Babulal Joshi, one of the most powerful politicians of the district. Babulal Joshi was a man of many facets – landlord, moneylender, forest contractor, PWD contractor, trader and politician. Every petty government functionary paid him obeisance. And, although he was himself never elected to the state legislative assembly or parliament because the seats were reserved for tribals, it was always his men who were put up and elected. They always acted on his bidding.

It was his land, Jagtu said. But the whole village believed that the only land Jagtu owned was one-quarter of an acre on which his mother, Suklia's hut stood, and where his animals were tied. The land had been in the name of Babulal Joshi for so long that people had forgotten that it had belonged to anyone else. But Jagtu could never forget. The land had belonged to his father, Kondoo. And now, by all rights, it was his.

Kondoo Gond, his father. He could scarcely remember him, he had died when he was only a child. Jagtu's only memories of him were with a bottle of home-brewed liquor, sprawled out for days in a drunken stupor, and the bouts of madness in his last days.

But it was not always like this. In the long evenings, as they sat outside their hut and watched the setting sun, Jagtu's mother would tell him of how it had once been.

Jagtu's father, and his father before him, for as far back as they could remember, had owned the land which was now held by Babulal Joshi. At that time, the land did not have a tube well or tractor. The grain they sowed was coarse, and the techniques of cultivation were primitive. Even so, they grew enough to fill their stomachs, except in the lean summer months when their grain stores were exhausted. But even then they did not starve because of the forests. As long as they were there, no tribal needed to worry.

The first roads were built when she was a child, his mother recalled. They brought nothing but misery. With them came the patwari, the forest guards, the police constable, the excise inspector, and then the politician in khadi. With the roads came the outsider.

Before her own eyes she saw her whole world transformed. The outsider came to stay; he felled their forests and took away their women. He brought with him his trade. In the village markets, goods appeared which they had never dreamed existed. In exchange for salt, a basic necessity, and for cheap and garish trinkets, cosmetics and synthetic cloth that were so alluringly displayed in the village markets, the tribals would barter away all their produce. A kilogram of chirongi nuts or cashew nuts or tamarind would purchased be from the tribals in exchange for a kilogram of salt; this would then be sold for ten to fifteen times the price in the markets of Raipur and Bilaspur. Impoverished and dispossessed, the relentless lean months of the summer would stretch long as the tribals began to learn the agony of starvation. And the forests were no longer there to support them, as they had for generations past.

However, the trader would never let them starve. He was always there in their hour of need. But at a brutal price. He would lend them the money they needed to tide over their months of need, but at crippling rates of interest. The defenceless tribal found himself increasingly caught in the vice of indebtedness, from which he could not free himself. And before long, he would lose his jewellery, his livestock and finally his land to the moneylender. And so the outsider who came empty-handed to their villages, in time came to own most of the land and property in the region, and the tribal, once self-sufficient and proud, became landless, deprived and powerless.

So it was with Kondoo Gond. Suklia recalled that when she married Kondoo, Babulal already was the most powerful man in the region. Tribals from tens of miles all around trudged to his threshold in their season of want. He owned a jeep, at that time the ultimate symbol of wealth and power. The jeep had its other uses as well; she had seen the occasional tribal who

failed to pay his dues dragged by the jeep in full view of the village. There was never any doubt about who was in command.

But it was rare to have to resort to such a naked display of power. With the tribal, and his unshakable moral code, such terror tactics were mostly unnecessary. Suklia recalled how frequently Kondoo would, like so many others, borrow against his entire next crop. After that it was not necessary for the moneylender, Babulal or his henchmen to visit the village, his fields or his home even once. Kondoo would toil in his fields even harder than he had ever done when the grain was for his own kitchen. The crop was harvested, threshed, packed in gunny sacks. Kondoo would then spend the bus fare to Babulal's village to deliver the grain at his doorstep, keeping nothing behind in his own house. After that, of course, he would starve again, and before long he would be at Babulal's door for another loan.

The day had to come, as it had for so many others before him, when Babulal would send for Kondoo. Babulal said that Kondoo's loan had mounted so high that he would have to transfer his land to him. But there was one hurdle; a law had been passed that land could not be transferred from a tribal to a non-tribal without the permission of the collector. Babulal assured Kondoo this was a mere formality. He would simply have to stand before the collector and testify that he had received in cash the full value of his land.

Kondoo had always looked on Babulal with an amalgam of fear and awe. He would never have dreamed of speaking out against the Seth. But his land, his beloved land. How could he lose it? He begged and pleaded for time, another chance. He recklessly pledged all his other belongings, his labour and that of his whole family, his life itself. Babulal's voice acquired a new edge of steel. We'll go to Jagdalpur, to the collector's court the day after the next village haat-bazaar, he said coldly, make sure you are here.

It was Kondoo's first visit to Jagdalpur. He sat outside the imposing court of the collector, trembling. Though he mutely put his thumb impression on all the papers that Babulal placed before him, he secretly resolved that when he stood before the great officer, he would plead with him. Master, I don't want to lose my land. I know I have taken much money from the Seth, who has always shown so much kindness in hard times. I pledge that my family and I will work our whole lives to repay the loan. But we do not want to lose our land. Please, great master, our father and mother, give me one more chance.

Suklia recalled how he had summoned all his courage and strength in preparation for this moment. Kondoo, gentle Kondoo, who had never raised his voice even at a child, prepared to speak out before the great officer, in defiance of the Seth. Anxious and fearful, he trembled, as he waited that day in Jagdalpur for the moment when he would stand before the collector.

But that moment never came. He sat with tens of other litigants outside the collector's court, awaiting the announcement of his name by the court peon. But while the others went in one by one, his turn never arrived. He never understood what happened. Only years later, when his son Jagtu read the collector's orders did he realise what had transpired. The order said that despite notice Kondoo Gond failed to appear before the court, therefore, an ex-parte order was passed against him. Jagtu learned soon enough from his rounds of the courts that sometimes only a few rupees to the peon were enough to ensure that the illiterate litigant was not even summoned before the court.

From that day, said Suklia, began Jagtu's father's decline. It was not that he did not drink before. Like all other tribal men and women, he had always loved his drink. But now he no longer drank with joy, but with a lingering sadness, and a deep, quiet anguish. The bottle was rarely out of reach. In the last months madness overcame him. She recalled the long, expensive, nightmarish bus journeys to the district hospital at Jagdalpur, with little Jagtu beside her, and Kondoo's friends from the village for support. But all these efforts were hopeless; the doctors said that they could do nothing. Kondoo was a shell, a husk of his old self when he died.

Jagtu had always been different from his friends. Even in the ghotul, he rarely joined in the merriment of festivals, or the gossip and laughter of his friends. Always aloof, he spoke rarely and little. He had studied up to the fifth standard in the tumbledown primary school five kilometres from his village. The middle school was too far away, and he could see that his mother's daily struggle to fill their stomachs was becoming too arduous for her frail and aging body. He decided, rather than his mother, that he would not attend school any further. He began to work in the fields of the Seth, side by side with his mother.

But although he no longer went to school he had a strange hunger for the printed word. Children's textbooks, the odd government handouts that reached the village, the posters that appeared during election time, even the newspapers in which purchases made at the village haat-bazaar were wrapped, would be devoured with a passion.

When his mother first told him about his father's land, he resolved to get it back one day. The resolve endured and strengthened with the passing years, but he did not know how he could get his land back. He felt, however, that it would only be through the courts. He would trek there each day in the lean months of the year, when no work was available. While his friends amused themselves with the girls at the ghotul, he learnt about life in quite another environment, the courts. He saw it all, the unlettered litigants caught in a bewildering maze of petition-writers, touts, lawyers, peons, court-clerks, and magistrates, and the unhurried complex corridors of the law itself. I will get justice from this, he resolved. Even from this I will get justice.

The year was 1982. It was in the courts that Jagtu learned for the first time about the new law regarding tribal land. He quickly learned the section, 170B, introduced by the new legislation in the Madhya Pradesh Land Revenue Code. This radical piece of legislation provides that in all old cases of land transfer from a tribal to a non-tribal in which the tribal was defrauded or deprived in any way of his legal rights, the land would be restored to the tribal forthwith, without even the payment of any compensation. What is more, this progressive new section provides that the presumption of the court in all cases of land transfer from tribals to non-tribals would be that the tribal was the victim of fraud, and the burden of the proof was placed on the non-tribal to prove that there was no deceit or illegality in the transaction.

This was the law, Jagtu said, greatly excited, which he would use to get his land back.

He spoke of this new law to his wife Manglia that night. But she remained sceptical and unenthusiastic. The courts are not for the poor, she said. Have you known anyone to get justice from the courts? And the courts cost money. You, who eat what you earn each day after back-breaking work, and still remain hungry, how do you expect to find the money that you need to swim your way through the courts? And do you know who you are fighting against, the Seth, the great master? Will he let you survive if you raise your voice against him? Today we do not have much, but we are still living. If you succumb to this madness of the courts, we will be ruined. We will have nothing. Why can't you learn to be content, why can't you accept, why can't you be like the others?

Jagtu did not argue. But his mind was made up. He missed his mother greatly. She would have understood. But not Manglia. He had met Manglia in the annual spring festival of Marhai. That was three years ago, when his mother was still alive. According to the custom, he built his own separate hut at a small distance from his mother's and he set up home there, with his wife. His mother spoke much less those last months. Bent and wrinkled, she lived increasingly with her own thoughts. But in the evenings sometimes, she would sit with him as of old and watch the setting sun, and speak of gentle Kondoo, and of the land which was no longer theirs.

Yes, his mother would have understood. This he was sure of. But not Manglia.

Manglia wanted him to be like the others, but this he could never be. They were good men, he knew, indeed the best, the elders of his village. But they were too trusting, and too accepting. He would never be like them. He spoke of the new law, nonetheless, in the village. This is our chance for justice, he said passionately. After years of exploitation, this is our chance to get back from the outsider what is by right ours.

But nobody would listen, as he had half-expected. It was not just fear that made them unresponsive, although there were none in the village who were not in awe of the Seth. If people were convinced that their fight was righteous and just, then perhaps it might have been possible to persuade them to cast aside their fear and come together to struggle for what they believed was right.

But most did not even believe that this law was right. After all, they argued, as they had taken a loan from the Seth which they could not repay, he had a right to take away their land. And the younger ones said: the land was transferred by our father or grandfather who are no longer with us. We were still children then, or not even born yet. How can we stand before a court and say that the land was taken away by fraud when we have no way of being sure? Even if the court passes an order giving us our land, we will still refuse to accept it.

Impatient and tired of arguing, Jagtu withdrew once again into himself. But his mind was made up. He would not accept injustice. He would fight, fight until the end to get back what was his due.

Having gathered all the papers connected with the land, Jagtu stood outside the office of the sub-divisional magistrate. When shown inside, he did not betray the nervousness he felt standing before the table of the young officer. He spoke of his father's land, of the Seth Babulal, of the loan and of the Collector's court. He spoke of the new law, and of his resolve to get back

his land which had been taken away by fraud.

The SDM said that they would institute a case in this court and assured him of justice. He also volunteered to appoint a lawyer for him, under the legal aid programme of the government. Struck by the unusual spirit of the boy, and knowing the power that his opponent would wield, the SDM sent for the best lawyer who had argued before his court, and made a personal request to him that he accept the legal aid case.

Notices went out, and before the first hearing, Babulal Joshi was in the office of the SDM. Dressed as always in starched and spotless khadi, with a long red tilak on his forehead, his hands folded, his voice soft but with an unmistakable ring of authority, Babulal spoke to the SDM of the case. He spoke of it disparagingly, and of the obvious and outrageous canard, that a person of his reputation and standing had engaged in any fraud. The case would of course be dismissed, he said. The SDM was polite but cold, and said that he could decide only in the court. Babulal's visit was followed by a number of telephone calls from people in influential places which the SDM chose to ignore.

The hearing of the case started. The SDM received his transfer orders. He had by then passed orders in a number of cases in favour of tribals, and the non-tribals, alarmed, had formed a 'Sangharsh Samiti' and collected a huge body of funds to challenge his orders in superior courts.

The SDM was however determined to pass orders in Jagtu's case before he handed over charge of his sub-division. In order to give Babulal's lawyer no scope to delay the case further, he decided he would keep himself free for the date of the next hearing of the case.

Two days before the appointed date, Babulal Joshi was again in the SDM's office, with folded hands. My lawyer has gone out of station, on work, he said. I would like a fresh date. The SDM refused, and pointed out that he had enough time to engage a fresh lawyer.

The morning of the case, a faint crackling phone-call came from Raipur. It was Babulal's lawyer. He said that the SDM could no longer hear the case, because he had obtained a stay order from the court of the Additional Commissioner.

How could he have obtained a stay order, the SDM asked when he had not even obtained copies of the proceedings of the court. The only ground for a stay order could be some prima-facie illegality in the court's proceedings. But for this, at least a copy of the proceedings should have been submitted before the higher court. I do not believe that you have obtained a stay order, the SDM said, and in any case, the stay order is not binding on me until I receive a copy of the order.

The lawyer panicked. He had sent the court's order staying further proceedings by post, but it would not reach until the following day. He pleaded with the SDM to wait only another day. The SDM refused.

Replacing the telephone the SDM passed an ex-parte order against Babulal Joshi, for absence despite valid notice. He called Jagtu and asked him to complete his evidence. He then drafted a lengthy and detailed order which he completed only late that night. Jagtu sat waiting outside the empty court. The copying clerk made out a copy of the order and the SDM then sent for Jagtu. Handing him the order, he said, at last your land is now truly yours.

Late the next morning, Jagtu was back in SDM's court. Indignant, he said, the tehsildar is refusing to give me possession of my land. It is my land, but he is still refusing. But by then the stay order from the court of the additional commissioner had arrived. Jagtu could not gain possession of his land.

Full of hope, Jagtu had believed that his fight was reaching its end. Little did he realise that his fight had only just begun.

Babulal filed an appeal against the order of the SDM in the court of the collector at Jagdalpur. Simultaneously, the hearing on the revision petition before the additional commissioner also continued. Jagtu found himself shuttling between Jagdalpur and Raipur, to attend the hearings. The collector confirmed the order of the SDM, but each hearing before the additional commissioner was concluded without any proceedings on the case. Armed with the collector's order, Jagtu once again went to the tehsildar to take possession of his land. But he maintained that the stay order of the additional commissioner was still in force, and therefore he could not transfer possession of the land to Jagtu.

The hearings were still proceeding before the additional commissioner when Babulal filed another revision application,

this time in the court of the commissioner. So now he began shuttling between the courts of the additional commissioner and the commissioner in Raipur.

His lawyer stood by him all this while and accepted no money apart from what the government gave him for legal aid. But expenses still continued to mount, and one by one Jagtu sold away his goats and two cows, and the wood of the sal tree that stood outside their home.

Through all this, Manglia remained dispirited and pensive, but she never actively resisted Jagtu's efforts. She knew that it would be of no avail. As one by one, the animals went, she made no complaint. The greatest wrench was the sal tree being cut down, because this was the 'devgudi', the abode of the gods of the house. It bode ill that the tree was cut down and sold. But Jagtu would never listen.

One night two constables entered their hut, and dragged Jagtu away to the police station, on the charge of disturbing the peace. Manglia, now five months pregnant, was distraught. She sold her last few pieces of silver jewellery for the lawyer's fees, and to bail out Jagtu. Another case started, this time in the tehsil court. So now Jagtu spent his time rushing between the commissioner's and additional commissioner's court in Raipur, and the tehsildar's court.

If this was not enough, another notice arrived, this time from Jabalpur. Babulal Joshi had filed yet another petition, this time in the High Court of Jabalpur. For the first time, Jagtu felt a little daunted. Jabalpur – he did not even know where Jabalpur was. It was hundreds of miles away, he was told. You had to catch a bus to Raipur, and then after the long and dusty bus ride there, you had to change two trains to get to Jabalpur. Until now he had not even seen a train.

But he still had some money saved up from all he had sold. His lawyer gave him a letter for a friend in Jabalpur, who was practising in the High Court. The lawyer assured Jagtu would help him. Jagtu then set off on his first journey to Jabalpur.

After the first hearing, he returned to Raipur for the case in the commissioner's court. Final orders were passed by the commissioner, again in Jagtu's favour. But now he could not get possession of his land because of the stay order from the High Court.

By the time he returned to his village, Manglia had given birth to a son. But Jagtu's joy on becoming a father was shortlived, for he could no longer evade the question of how he would pay to fight his case in the High Court.

Two days later, his mind was made up. All they owned now was their hut, and the small patch of land around it. He would sell this and go with his wife and son to Jabalpur. Somehow they would manage there and fight their case. Manglia heard Jagtu's decision without argument or comment. Only her eyes spoke, saying more than any words could. Nonetheless, she complied, and a week later Jagtu left his village, with his wife and infant son.

When the train pulled into Jabalpur station, Jagtu for the first time experienced the stirrings of panic. He had brought along his wife and son, but where would they go? How would they eat? When he had come alone, he had slept on an open pavement. But where could he take his family?

They passed the first two nights on the pavement. During the day, he would sit outside the lawyer's office, as his wife sat quietly at its gate, cradling their infant son. Food was expensive, and he already found their money slipping away.

There was no other way but to find work. After three days of searching, he found employment along with his wife on a construction site. His wife tied her son on her back as they worked, dust in their hair, in their mouths, and in their eyes.

They were given a small hut at the site itself, where they stretched out that night, exhausted. The baby wept disconsolately, unable to sleep.

Jagtu was silent for a long time. Then at last he spoke, his voice choked with tears. Perhaps, Manglia, you were right, he said. It was my madness, nothing else, this obsession with the courts. What have I been able to give you? We have lost our home and hearth and everything we possessed. Even then, we are no closer to getting back the land that is ours. I don't know if we will ever succeed. Yes, perhaps you were right, it was only my madness. May be I, too, should have learnt like the others to accept, to be content.

Manglia's eyes changed. They burned with a passion that Jagtu had never seen before. No, Jagtu, no, she said. Don't

change, don't ever change. Don't lose heart after having fought so long, so bravely and so hard. We will not give up, Jagtu. We will never give up. We will get back our land one day (Mander 2001: 72-86).

Acknowledgements and Postscript

This story was written as a tribute to the young tribal man I encountered during my first tenure as SDM, who fought this long battle for almost two decades. To protect identities, I had altered his name and even the location of the story. The events of the legal battle in this story are entirely true, but the personal relationships are partly fictionalised, because this was written originally as the script of a movie.

Many readers have asked me whether Jagtu ultimately got back his land. In most such stories, across the length and breadth of tribal India, Jagtu would not. But it is almost a miracle that the tribal young man after whom Jagtu is fashioned did get back his land, several years later. This was the result of a combination of factors, most importantly his very rare persistence and courage. But also it was made possible by the unusual support he got from another young officer years later, who dropped all work to rush to the village and give him possession of the land on a single day on which by chance there was no stay order from any court. The court battles continue to date, but he fights it now from a position of strength, because he has become master of a vast tract of some of the most valuable land in the district.

Constituting about 8% of the total population of India, the tribal peoples are among the most vulnerable groups in the country. Not only do they share with other disadvantaged groups the common travails of economic deprivation, they are also faced with a grave threat to their cultural integrity and socio-political freedoms. Unlike the Scheduled Castes, for instance whose main problem is to find a place of dignity and equality within mainstream society, the central problem of tribals has been to cope with the consequences of the brutal and destructive way that their relative isolation from the mainstream has been broken down.

Though this isolation has historically never been absolute, particularly for tribes in west, central or south India¹, tribal communities managed to retain a distinct identity of their own through centuries of interaction (albeit limited) with the mainstream. The specific set of factors that came to threaten this independence in a serious fashion, however, arose only with the advent of the colonialism, with the single most important factor being the introduction of state ownership of forests by the colonial government, a policy continued by the post-colonial state.

In effect this policy, that on the one hand facilitated unhindered exploitation of natural resources by the state, represented the first but most significant attack on the livelihood base of tribal communities. Post-independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical – as tribal institutions and practices were forced into uneasy existence with or gave way to market or formal state institutions (most significantly, in the legal sphere), tribal peoples' found themselves at a profound disadvantage with respect to the influx of better-equipped outsiders into tribal areas. The repercussions for the already fragile socio-economic livelihood base of the tribals were devastating – ranging from land alienation on a vast scale to hereditary bondage.

As tribal people in India perilously, sometimes hopelessly, grapple with these tragic consequences, official tribal policy continues to grope confusedly in a vain attempt to find the golden mean between the two extremes of isolation and assimilation. The enlightened rhetoric of the policy

¹ Also called the Schedule V tribes.

after Independence has been translated into a small clutch of bureaucratic programmes, which have done little to assist the widely encountered pauperisation, exploitation and disintegration of tribal communities. As tribal people respond occasionally with anger and assertion, but often also in anomie and despair, the only ray of hope lies in the radical law guaranteeing self-rule, the Panchayats (Extension to Scheduled Areas) Act, passed by the Indian Parliament in the winter of 1996.

This book will attempt to briefly describe the grave and complex predicament of tribal communities in contemporary India, and the legislative and policy interventions, which have been designed to address these problems. It will end with a description of the Panchayats (Extension to Scheduled Areas) Act, 1996 (also called (PESA) and its potential to reverse or at least restrain some of the elements in the tragedy of the tribal people in India.

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 would be evident, this definition does not take us very far as it could be applicable to many types of communities.² 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 his/her 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 environment³ 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'⁴ (Government of India 1998-1999: 31).

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

² And indeed, such confusion was widespread during the early years of British rule when all of India's bewildering variety of communities were labeled as tribes, even when early ethnographers did note that some were identifiably 'wild', 'primitive' and 'aboriginal'. It was not until the twentieth century that a census administrator named Herbert Risley set the tone for much of the subsequent discussion by distinguishing between 'caste' and 'tribe'. For an account of the historical context in which this understanding evolved, see Anand (1995) who argues that colonial and contemporary definitions of tribal identity are closely tied to the political project of colonial (and post-colonial) discourse.

³ This is roughly what Savyasaachi (1998:27) describes as the tribals' 'forest universe'. Savyasaachi goes on stress the importance of the unique tribal work culture as opposed to the industrial work ethic as a source of identity for tribal communities.

⁴ For a detailed transcription of and commentary on the Constituent Assembly debates on the Fifth and Sixth Schedules, see Savyasaachi (1998).

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 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.

As mentioned earlier, the 1991 census enumerated the total population of the country as 846 million, out of which the population of Scheduled Tribes was 68 million, constituting 8.08 per cent of the total (Government of India 1998-1999: 31). 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.

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, 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, tribals 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.

Dilemmas of Tribal Development Policy: A Historical Context

The outcome of long process of subjugation of tribal people and regions, and with the coming of the British, of internal colonisation and resource emasculation is the fact that in the 167 districts, 'with a tribal percentage which is at least as high as the national average, 94 per cent of tribals live in an area which is either dry, forested or hilly' (Shah *et al* 1998: 147-148).

The relative isolation of aboriginal tribals in 'refuge zones' (Raza and Ahmed 1990) was the cumulative result of centuries of subjugation of the aboriginal original inhabitants of India by successive waves of more powerful and endowed communities⁵. However, Shah *et al* point out that

Over time, in the refuge zones, the tribals came to develop a relationship of organic totality and symbiosis with their immediate environment.... today their existence in even these areas is coming under threat. This process was greatly accelerated after the advent of colonial rule, especially over the last century. However, the coming of independence has only meant the aggravation of this unequal equation, through the development of what can best be described as a process of 'internal colonialism' (Shah *et al* 1998: 151).

During colonial times, the dominant policy of British administrators with regard to tribal areas was to safeguard their isolation in officially declared excluded or partially excluded areas⁶. In practice, however, the policy of isolation was seriously compromised by the dominant concern of the colonial state for maximising revenue extraction, because regions of tribal concentration were typically the richest in terms of endowments of forest and mineral wealth. The policy of isolation translated itself into a general policy of non-interference with tribal customs and traditions, except where these became barriers to the extractive objectives of the colonial state. Therefore, the policy of non-interference did not constrain the colonial state from imposing on tribal communities the entirely alien and fundamentally destructive concepts of state ownership of forests and private property of land, which as we have noted laid the foundation for the expropriation of tribal wealth which continues until the present day⁷. At the same time, the colonial administrators encouraged Christian missionaries, whose main ideology was of 'assimilation', albeit into Christianity, rather than the caste Hindu mainstream. Missionaries contributed very significantly by providing educational and health services in difficult and remote tribal regions⁸.

⁵ As Shah *et al* imply above, these 'refuge zones' often represented lands otherwise less suited to settled agriculture, the mainstay of non-tribal society. However, as Anand (1993:5) concludes, before the advent of colonialism 'the tribals still lived in relative isolation and with a fair degree of control over their habitat' 'although often within the context of a subordinate political relationship with a dominant non-tribal power' following from 'tension and conflict and an unequal fight'.

⁶ The evolution of this policy is described in Savyasaachi (1998) and Anand (1995).

⁷ Savyasaachi (1998) goes a step further to argue that the special administrative measures established putatively for protective purposes in fact facilitated commercial forest management. One particularly striking example of this is provided by the restriction on shifting cultivation, which was often the lifeblood of tribal economy and culture. (The interested reader is referred to Elwin (1939) for an account of how this ban on *bevar* affected the life of the *Baiga* tribe).

⁸ An interesting, if unconventional reading of the relationship between the missionaries and the tribes they ministered is provided by Anand (1995, 1996).

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. 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 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' (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 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, such as 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 'uncivilised 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. Elwin 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 the following:

- 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 them, 'Integration can only take place on the basis of equality: moral and political equality'. Guha explains Elwin's philosophy

They must know the people, he said, know what stirred them, moved them, energised them. When on tour they must drink with the tribals... drink, he added significantly, from the same collective bowl (Guha 1999: 258).

It is significant that NEFA, now designated Arunachal Pradesh, remains the only state in the north-east which is not 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: 106-107).

However for the rest, 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 with regard to each of these.

Status and Problems of Tribes in India

Tribal people share 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 is substantially higher than the national average. The figures for 1993-1994 provide an illustration of this gap, which is significant even though narrower than the nearly 20 per cent level of 1983-84 (Planning Commission, 2000).

Table 1: Percentage of Population Living Below the Poverty Line

	Rural	Urban
Scheduled Tribes	51.92	41.14
General	37.27	32.36

Source: Government of India, 1998-1999.

Further, the higher proportion of the Scheduled Tribe population (32.69 per cent) engaged in agricultural wage labour compared to the general population (25.74 per cent), indicates the livelihood

vulnerability of tribal peoples and the problems caused by land deprivation (described below) and dependence on marginal, low-productivity land.

Tribal communities also suffer deprivation with regard to a crucial source of human capital – education. For example, in 1991, as against the national average of 52 per cent, the literacy rate of Scheduled Tribes was around 29.60 per cent. More strikingly, more than 80 per cent of Scheduled Tribe women are illiterate (Planning Commission 2000).

However, from the viewpoint of policy, it is important to understand that tribal communities are vulnerable not only because they are poor, assetless and illiterate compared to the general population. Often their distinct vulnerability arises from their inability to negotiate and cope with the consequences of their forced integration with the mainstream economy, society, cultural and political system, from which they were historically protected as the result of their relative isolation (see above section).

The process of internal colonisation that accompanied and subsequently survived imperial rule is best illustrated by the state-led resource emasculating of forests, the most important endowment of tribal communities for survival and livelihood. Even today, according to Saxena (1996) (quoting Lynch 1992), 'there are about a 100 million forest dwellers' and 'another 275 million' who depend on the forest produce for their livelihood'. Though exact figures are not known, a substantial proportion of these would be tribals.⁹

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 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.

Government have created new rights of industrialists to forest produce at highly subsidised prices. Saxena (1996) gives 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 this 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 NTFPs, even for the manufacture of brooms, leaf plates and agarbattis abound¹⁰.

In the process of internal colonisation, a fatal blow was the introduction of the legal regimes of private property to replace age-old practices of various forms of community control, and individual access mediated by community assessment of individual needs. The cumulative result of this has been the massive and steady transfer of lands held in the past by tribal communities and cultivators into the hands of non-tribals. This process of expropriation has continued unabated especially since the turn of the

⁹ 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, but 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.

¹⁰ For a detailed exposition of the adverse impact of forest policy on forest dwellers, see Saxena (1996).

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 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 precarious¹¹. We have already noted how the access of tribals to forests for their livelihoods has shrunk both because forests themselves have shrunk, and because the regulatory regime continues to restrict tribals 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 tribals are systematically deprived of their cultivable holdings, by non-tribals 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 1997-1998 a number of state-specific studies of the problem, and reports have been received by the Ministry from Bihar, Andhra Pradesh, Madhya Pradesh, Gujarat, Rajasthan and Maharashtra.

The reports (as yet 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. The 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 but 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.

The 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, 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 the tribals have an innate fear based on bitter past experience of banks, cooperative institutions and other government sources of credit; they prefer the predictability of the moneylender despite his usurious interest rates. In any case, most banks and cooperative institutions are unwilling to provide consumption loans, and moneylenders are the only sources of consumption credit.

¹¹ 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 'civilisation' on their traditional social organisation.

A combination of these factors lead to an extreme dependence on moneylenders on the part of the tribal, keeping him in perpetual debt and resulting in the mortgage and ultimate loss of his land. Though this phenomenon is common enough, another particularly tragic outcome of this indebtedness is the phenomenon of bondage, wherein people pledge their person and sometimes even that of their families against a loan. Repayments are computed in such terms that it is not unusual for bondage to persist until death, and to be passed on as a burdensome inheritance to subsequent generations. The 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.

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 sale of tribal lands to non-tribals have been found to frequently collude with non-tribals to defraud the 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 process¹². 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).

Apart from a water policy which 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. In the context of the Bailadila Iron Ore Mines in Bastar, the social upheaval 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 into these areas and corner both the land and the new economic opportunities in commerce and petty industry. Even wage employment to local tribals is rare. 'In Chotanagpur area, though the tribals constitute more than 50 per cent of the total population, there are

¹² For an in-depth analysis of the impact of big dams on vulnerable tribal populations, see Mander (1999) (mimeo).

not more than 5 per cent of them in the industrial working force. In some of the large firms like TISCO, Jamshedpur and Bharat Cooking Coal Ltd., Dhanbad, the tribals employed are less than 5 per cent' (Shah 1990: 135). As Anand (1993) puts it 'Development for the nation has meant displacement, pauperisation, or, at its very best, peonage for the tribals'.

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 as 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 have replaced the traditional joyous social drinking, and in growing fissures in tribal value systems of integrity, mutual respect and harmony with nature.

Tribal communities from within have also not remained unaffected. 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 vertical¹³. However, in their close encounters with the caste Hindu civilisation, some tribes became Sanskritised 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).

These are also 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. Positions have hardened also on the opposing Christian missionary camp. The resulting sectarian hatred that erupted in 1999 caught international headlines with the burning alive of Australian missionary Graham Staines and his two small sons in a remote tribal settlement in Orissa, allegedly by hindu tribal mobs. Tribal communities have in this way been drawn into campaigns of aggressive religious militancy as pawns ironically by a civilisation which excluded them for centuries.

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 resulted in a situation in which many regions of tribal concentration are immersed in an unending cycle of violence. All states in the Indian northeast have been ripped apart by separatist, and sometimes sectarian, violence.

¹³ Anand (1993) is a comprehensive discussion of these processes of vertical integration along class lines and emergence of a tribal elite.

In many stretches of forested Central India, it is the People's War Group and an array of other Naxalite Marxist-Leninist outfits¹⁴, 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 mines¹⁵. 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.

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 legislation of 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 alienation 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 moneylending¹⁶ and to prevent usury, the Bonded Labour System (Abolition) Act, 1976, the Minimum Wages Act, 1948 and the Child Labour (Prohibition and Regulation) Act, 1986¹⁷. 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.

¹⁴ 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.

¹⁵ 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).

¹⁶ 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.

¹⁷ For details on the protective measures instituted and implemented by the Government, refer to Mander (Mimeo).

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.

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, mimeo)

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 1973 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 chapter 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 earlier, also establish that transfers of land from tribal land owners to non-tribals continued despite the various enactments, for a variety of reasons. Collectors or other agencies responsible for protecting the interests of tribals while regulating such transfers, in most cases did not apply their minds to issues of vital importance to the tribals. These include whether or not, the tribal had any other alternative livelihood, or 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 by 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 has also been debarred in these proceedings. There is 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 has been in most districts of the state not 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. But 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 will rely on two unpublished studies by the Tribal Research Institute, Bhopal (TRI) (1983 and 1987-88), and 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 which 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 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 to the law.

Further the 1983 study also revealed that in the 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, and 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.

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 weary or are 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.

We have seen that the fundamental cause of tribal land alienation is chronic indebtedness. No law to protect the 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.

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 mobilised and organised 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 of Madhya Pradesh. The studies by the TRI have noted and lamented the very poor levels of awareness of tribals of the measures contained its 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 atomised individuals fighting the might of socio-economic and political power, with judicial instruments heavily weighted against them. Only if they combine and seek organised legal redress, are they likely to succeed. But 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 in some quarters, actual budgetary allocations in the first three Five Year Plans for tribal development were extremely niggardly. 'On an average the government spent Rs 87.3 million annually on the Scheduled and Denotified Tribes¹⁸ 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 the tribal people and regions, an extremely important budgetary mechanism was introduced from the Fifth Plan. This was the

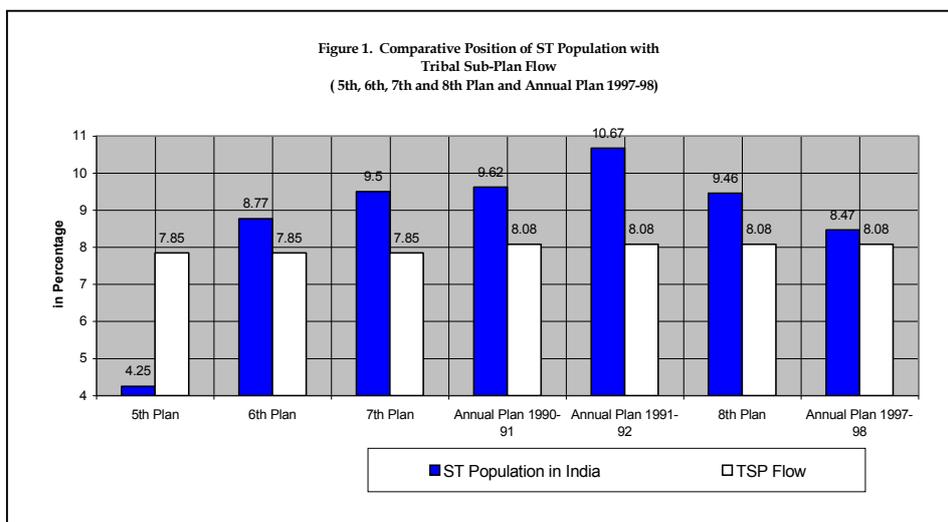
¹⁸ Denotified Tribes are tribal groups that were designated as criminal tribes during British rule. They suffered extensively from repression, and continue to remain vulnerable in Independent India, because they have not been freed from the stigma of their past.

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 of 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.

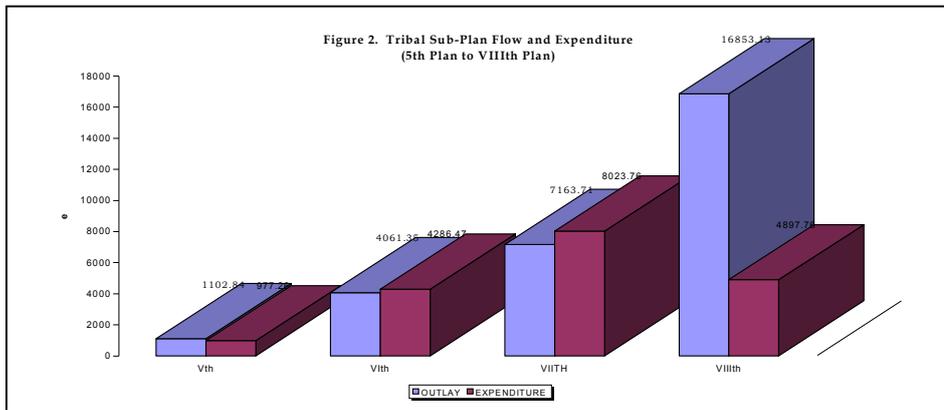
Modified Area Development Approach (MADA) Pockets were formed in groups of villages having population of 10,000 or more with 50 per cent or more tribal population. 252 MADA Pockets were created. In addition, 79 Clusters were also formed for groups of villages having population of 5,000 or more where 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 1998-1999: 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 and 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 and Diu' (Government of India 1998-1999 : 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 given in Figure 1. 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 2). Flows to TSP are officially monitored for various departments of the central and state governments¹⁹.



¹⁹ 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 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 which have actually 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 MADAPs, 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 largest proportion of centrally sponsored programmes for tribal development are 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 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 and 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 1998-1999: 35). A similar scheme was introduced in 1989-1990 for construction of boys hostels. The Ashram School scheme was launched in 1990-1991 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 1993-1994 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 and Empowerment (Government of India) provides full assistance for setting up of the education complexes (Government of India 1998-1999: 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 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 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 Sankritised Hindu in terms of its

cultural moorings, values and idioms. The Christian missionary schools in tribal regions country-wide have been equally aimed at assimilation, although into a different cultural ethos²⁰.

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 remains of meeting these aspirations without alienating tribal communities from the roots that sustain them.

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 73rd and 74th 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 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 in 1995 wide powers to the gram sabha or assembly of all village residents in Scheduled Areas. 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 recognises 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 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

²⁰ The Gandhian Thakkar Bapa, often on the opposite side of the fence from Verrier Elwin with his 'integrationist' approach to the tribal policy dilemma, 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.

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 space for people's empowerment, genuine popular political participation, convergent community action, sustainable people oriented development and auto-generated emancipation.²¹ 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 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 the 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 institutions and processes. The same problems would apply to provisions in the law which subordinate government functionaries like teachers and health workers to the gram sabha.

Minimalistic Interpretation - 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.

²¹ 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.

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 oppression²². 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 subsidised 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 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 Adjudication²³

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.

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.

²² 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!

²³ The remainder of this sub-section is derived substantially from Mander and Naik (1999).

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 realised, 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 its use in 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 the 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 women who mainly 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 terrorised by witch hunting, because every woman is a potential witch who can be stoned to death. Women have virtually no right to property. Women are 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, the 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, that 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 what are 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 localised 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 the 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 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 Areas²⁴

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

²⁴ For fuller details, see Mander and Naik (1998)

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 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).

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 nationalised 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 title 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 typically they 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 which would include both tribal and non-tribal residents of the settlement. 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 is allowed to be represented 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 lay down explicitly 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 of 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, 1995. 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 before the issue of a license to a moneylender mandatory (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 minimal procedure, as a first step, could be to lay

down that all money-lenders should have a licence from the gram sabha, that they should keep written accounts (ratified by the borrowers), and that debts not supported by written evidence will be considered null and void. But over time, more effective procedure need to be developed, which may be as follows:

In any Schedule V area, any person or institution who 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 the 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 firstly 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, the moneylender may 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 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 the moneylender.

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 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 the tribal identity and survival remain as real as ever.

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