

PROTECTING THE RIGHTS OF THE TRIBALS: Undoing the Wrongs

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Development, wrote, Jawaharlal Nehru, should be undertaken within the broad framework of five fundamental principles: respecting tribal rights, providing encouragement to traditional arts and culture, avoid introducing too many outsiders into tribal territory, desist from over-administering these areas and judging results not by statistics or money spent but by the quality and evolvment of human character.¹

Unfortunately, even today, the tribal communities face a disproportionately higher level of deprivation compared to the rest of the population almost six decades after the above lines were written. The recently released official data reveals that the proportion of underweight children below five years among the Scheduled Tribes (i.e. 45%) was much higher as compared to that among general population (i.e. 36 %) during 2015-16.²

Land acquisition for development, i.e., for mining, irrigation canals, construction of dams and industrialisation, holds a positive connotation for most policy makers and economists. The fallout of such projects on the tribals, the marginalised and the environment too have been subject of intense debates.

According to one estimate, such acquisitions have especially affected women and persons belonging to the SC and ST communities. Though STs comprised only 30 per cent of the population of Jharkhand, they represented 41 per cent of the state's displaced population between 1951 and 1995, says an international report released last year.³

High Level Committee Report on Tribal Development

The report prepared by the High Level Committee for the Ministry of Tribal Affairs (MoTA) under the chairpersonship of Prof. Virginius Xaxa was kept under wraps by the government for a long time.⁴ The report mentions that around one-fourth of tribals in the country become displaced persons (DPs) or project-affected persons (PAPs) at least once in a life time because their regions are rich in natural resources.⁵

The report further points out that a government-appointed Expert Group on Prevention of Alienation of Tribal Land and its Restoration had estimated that out of the total number of people displaced due to development projects, 47 per cent were tribals.⁶

It says that tribal areas have undergone large-scale development of industry, mining, infrastructure projects and urbanisation, but ironically, because of these very reasons tribals and forest dwellers faced loss of livelihood, massive displacement and involuntary migration.⁷

¹Foreword to the second edition of Dr. Verrier Elwin's book entitled A Philosophy For NEFA (North East Frontier Agency) by Jawaharlal Nehru, dated 9 October, 1958, <http://bit.ly/2xgHFY6>, (accessed on 14 August, 2017)

²National Family Health Survey-4 India Fact Sheet (2015-16), <http://bit.ly/2xged4L>

³Pushed Aside: Displaced for 'Development' in India, July, 2016, Norwegian Refugee Council (NRC) and Internal Displacement Monitoring Centre (IDMC), page no. 20, <http://bit.ly/2fcyy09>

⁴Sethi, Nitin (2014): Tribals worse off, facing alienation, says high-level panel report, Business Standard, 24 December, <http://bit.ly/1wE5JwZ>, (accessed on 14 August, 2017)

⁵Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India (chaired by Prof. Virginius Xaxa), submitted to the government in May 2014, Ministry of Tribal Affairs, page no. 258, <http://bit.ly/2yr8Xst>

⁶Ibid, page no. 258

⁷Ibid, page no. 29

Citing a 2008 study by the Centre for Science and Environment (CSE)⁸; the Xaxa Committee report says that roughly half of the top mineral-producing districts in the country are tribal districts with a forest cover of 28 per cent. This figure is larger than the national average of 20.9 per cent. However, much of this forest land has been diverted for mining purposes, causing environmental degradation, loss of livelihood, and displacement of tribal communities. The armed conflict between Maoists and the state is also concentrated in such mineral rich heavily forested areas, inhabited by tribals.⁹

The three states of Odisha, Chhattisgarh and Jharkhand, with substantial tribal populations, also hold considerable mineral reserves. It is mentioned in the report that these three states alone account for almost 70 per cent of the country's coal reserves, 80 per cent of its high-grade iron ore, 60 per cent of its bauxite and almost 100 per cent of its chromite reserves.¹⁰

The report further says that in the state of Chhattisgarh, almost 1.71 lakh hectares of forest land was diverted to non-forestry use between 1980 and 2003, of which 67.22 per cent was for mining.¹¹

Between 1951 and 1995, the state of Jharkhand had lost 15.46 lakh acres of land, out of which most of the land (5.15 lakh acres) was allocated for mining activities, which is roughly 33.3 per cent.¹²

Estimates of Persons Displaced

An analysis of social groups of displaced persons (DPs) or project-affected persons (PAPs) in 13 states of India, which is based on various reports, documents and studies prepared by experts and social scientists, reveals that out of 20.41 million DPs/ PAPs, 15.65 per cent are Dalits (i.e. Scheduled Caste persons) and 30.7 per cent are tribals. Thus, the proportion of STs among DPs or PAPs is disproportionately high.¹³

A conservative estimate of persons displaced by development projects in the country during 1951-1990, which was based on a survey of then existing reports and studies, shows that STs constituted 52.2 per cent of all displaced persons pertaining to mining of whom only a quarter have been resettled.¹⁴

In Andhra Pradesh, roughly 76.1 per cent of DPs and 59.6 per cent PAPs were STs, according to one estimate.¹⁵ In Jharkhand, during 1951-1995 almost 40.1 per cent of DPs were found to be from ST communities.¹⁶ Out of the total 14.66 lakh DPs/ PAPs in Odisha, 42.03 per cent were STs.¹⁷

ST persons comprised 44.69 per cent of DPs/ PAPs in Gujarat.¹⁸ In Madhya Pradesh, 29.43 per cent of persons displaced were tribals.¹⁹ ST persons constituted 19.16 per cent of DPs/ PAPs in West Bengal during 1947-2000.²⁰

⁸Rich Lands, Poor People: Is 'Sustainable Mining' Possible?

⁹Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India (chaired by Prof. Virginius Xaxa), page no. 49

¹⁰Ibid.

¹¹Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India (chaired by Prof. Virginius Xaxa), page 263

¹²Ibid, page no. 266

¹³Ibid, page no. 259

¹⁴Ibid, page no. 260

¹⁵Ibid, page no. 264

¹⁶Ibid, page no. 266

¹⁷Ibid, page no. 268

¹⁸Ibid, page no. 270

¹⁹Ibid, page no. 274

²⁰Ibid, page no. 275

Table-1 provides an accurate picture of state-specific number of DPs/ PAPs on account of mining. The Xaxa Committee report has further pointed out that most states have not provided updated number of DPs/ PAPs and also not revealed the project-specific displacement figures along with time periods.

Table 1: Number of DPs/ PAPs in various states pertaining to mining²¹

States	Total no. of DPs / PAPs due to mining	Period
Andhra Pradesh	1,00,541	1951-95
Jharkhand	3,66,971	1951-95
Odisha	1,00,000	1951-95
Gujarat	4,127	Upto 2004
West Bengal	4,18,061	1947-2000

Legal Safeguards for Tribals and Forest Dwellers against Mining & Forced Displacement

The extensive and existing legal provisions for protection of forest dwellers and STs against mining and displacement can be comprehended from a reply by a minister in Parliament.

On November 30, 2015, while replying to a question in the Lok Sabha, the Minister of State in the Ministry of Tribal Affairs Mansukhbhai Dhanjibhai Vasava said that apart from the safeguards provided by the Constitution of India, the interests of STs is protected due to the enacting of legislations like Panchayats (Extension to the Scheduled Areas) Act (1996), Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR), the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (MMDR).²²

The minister said that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (also called LARR Act, 2013), stipulated that as far as possible, no acquisition of land should be made in the Scheduled Areas and where such acquisition did take place it should be done only as a last resort.

In case of acquisition or alienation of any land in the Scheduled Areas, the prior informed consent of the concerned Gram Sabha or the Panchayats or the Autonomous District Councils would have to be obtained. The affected ST households were also required to be resettled properly and adequately compensated in accordance with the provisions of the LARR Act (2013).

²¹ **Source:** Compiled by the author from Tables 8.5, 8.7, 8.8, 8.9, 8.14 of the Report of the High Level Committee of pages 264, 266, 268, 269, 275 respectively.

²² Answer by the Minister of State in the Ministry of Tribal Affairs Shri Mansukhbhai Dhanjibhai Vasava to the Unstarred Question no. 65 of Lok Sabha, (to be answered on 30 November, 2015), <http://bit.ly/2w85E8h>, (accessed on 30 August, 2017)

The minister clarified that the Coal Mines (Special Provisions) Act 2015, requires that acquisition of land for coal mining purpose should be in accordance with the provisions of the LARR Act (2013), thus implying that the safeguards for the STs as laid down in the land acquisition legislation would have to be followed while acquiring land for mining coal.

Shri Vasava added that the MMDR Amendment Act, 2015 makes it obligatory for the states to keep in view, the provisions contained in Article 244 read with Fifth and Sixth Schedules to the Constitution, PESA Act (1996) and the Forest Rights Act (2006), while making rules for the District Mineral Foundation.

District Mineral Foundation (DMF) and Tribal Welfare

When the Centre for Science and Environment (CSE) analysed the collection and utilisation of the funds under the District Mineral Foundation (DMF), it found that up to February 2017, DMFs across the country had received about ₹5,800 crore. A major chunk of the total funds received till February 2017, i.e. ₹5,469 crore came from just 50 big mining districts.²³

On analysing the utilisation of funds received under the DMFs in nine districts - Dantewada, Korba, Raigarh (Chhattisgarh), Kendujhar, Sundargarh, Jharsuguda (Odisha), West Singhbhum, Dhanbad (Jharkhand), and Singrauli (Madhya Pradesh), it was found by CSE that most of these districts allocated funds to “high priority” issues as identified under the respective state DMF rules, although there were considerable variations in the allocations. Singrauli district of Madhya Pradesh allocated more than 63 per cent of its DMF budget on the construction of roads and bridges, thus violating Pradhan Mantri Khanij Kshetra Kalyan Yojana (PMKKKY) guidelines, which says that not more than 40 per cent of the funds should be spent on such projects.²⁴

For the establishment of DMF in districts affected by mining, the Ministry of Mines amended the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) through the MMDR Amendment Act, 2015 for the introduction of section 9(B).²⁵

Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA Act) and Tribal Welfare

Based on the report of Dileep Singh Bhuria Committee submitted in 1995, Parliament enacted the PESA Act (1996). The provisions of the act extends Part IX of the Constitution with certain modifications and exceptions (Section 4) to the Fifth Schedule Areas of 10 states, namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana. These Schedule Areas in 10 states cover 108 districts (45 fully and 63 partly).

The act vests gram sabhas and panchayats with greater powers. These include approval of plans, programmes and projects for social and economic development, mandatory consultations before land acquisition in the Scheduled Areas and before resettling or rehabilitating persons affected by development projects. Mandatory recommendations prior to grant of prospecting licence or mining lease and grant of concessions for exploitation of minor minerals in Scheduled Areas are also necessary under the act. In short, PESA Act mainly aims to protect the tribal population from exploitation by making gram sabhas and gram panchayat centers of self-governance and has laid special thrust to empower gram sabhas which has not been conferred by any other act in any state.²⁶

²³ Banerjee, Srestha (2017): Poor despite Rs 5,800 crore, Down to Earth, 29 June, <http://bit.ly/2xmsiwt>

²⁴ Ibid.

²⁵ Press release: Payment of Mineral Royalty to Districts, Press Information Bureau, Ministry of Mines, 1 August, 2017, <http://bit.ly/2wA7Eua>

²⁶ Brief note on PESA of Andhra Pradesh, Ministry of Panchyati Raj (Accessed on 10 August, 2017)

The effective implementation of the PESA Act was expected to provide the following benefits to ST population residing in Scheduled Areas:²⁷

*Reduce poverty and out-migration among tribal population as they will have greater control over natural and public resources such as minor water bodies, minor forest produce and minor minerals through gram sabhas.

*Check illegal land alienation and also restore unlawfully alienated tribal lands. This will not only reduce conflict and left-wing extremism but will also improve socio-economic status of tribals.

It must be noted that the criteria followed for declaring an area as Scheduled Area are (a) preponderance of tribal population (b) compactness and reasonable size of the area (c) under-developed nature of the area and (d) marked disparity in economic standard of the people. Although these are not spelt out in the Constitution of India, they have become well established.²⁸

The PESA Act also empowers gram sabha/ panchayats at appropriate levels with control over institutions, resources and functionaries in social sector and local plans including Tribal Sub-Plans (TSP). Experts have observed that with the clubbing together of plan expenditure and non-plan expenditure in the Union Budget 2017-18, the TSP has been converted into a mere "Allocation for Welfare of Scheduled Tribes". Thus, it has become difficult now in implementing the norms pertaining to TSP. It implies that gram sabha/ panchayat would be starved of necessary funds that violates the PESA Act in letter and spirit.²⁹

Status of PESA Act Implementation in Scheduled Areas

In the following paragraphs we discuss the overall compliance status of the state laws with the PESA Act in 10 states.

Only six states i.e., Andhra Pradesh, Gujarat, Himachal Pradesh, Maharashtra, Rajasthan and Telangana have framed rules for implementation of provisions of PESA Act. In four states (Andhra Pradesh, Jharkhand, Maharashtra and Telangana), there is no compliance of concerned subject laws under mines & minerals with the PESA Act. Similarly, in the states of Andhra Pradesh, Gujarat, Jharkhand, Maharashtra, Odisha, Rajasthan and Telangana, there is no compliance of concerned subject laws under land acquisition with the PESA Act.

Jharkhand has not made its Panchayati Raj Act compliant with sections 4(i), 4(k), 4(l) and 4(m)(iii) of the PESA Act (1996). The state of Madhya Pradesh has not made its Panchayati Raj Act compliant with section 4(m)(iii) of the PESA Act.

It can also be seen that the poverty ratio is highest in Chhattisgarh (39.93 per cent), followed by Jharkhand (36.96 per cent) during 2011-12.³⁰ Both these states were among the 10 states of the country in terms of Ease of Doing Business Reforms Ranking 2015-16 -- a study which was jointly done by the Department of Industrial Policy and Promotion (Ministry of Commerce & Industry) and the World Bank Group.³¹

²⁷Ibid.

²⁸Official website of Panchayats (Extension to the Scheduled Areas) Act (1996) i.e. <http://pesadarpan.gov.in/>, (accessed on 10 August, 2017)

²⁹Pisharoty, Sangeeta Barooah (2017): Dalit Rights Activists Slam Budget, Say Allocation for SC/STs in Violation of Jadhav Guidelines, TheWire.in, 4 February, <http://bit.ly/2l825ZF>

³⁰Press Note on Poverty Estimates, 2011-12, Planning Commission, July, 2013, <http://bit.ly/2fLWfwl>

³¹Press Release: Assessment of State Implementation of Business Reforms 2016, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, <http://bit.ly/2ynhf3P>, (accessed on 2 September, 2017)

Declining Economic Significance of Mining & Quarrying

The growth rate in real gross value added (GVA) pertaining to mining and quarrying sector was over 10 per cent in 2014-15 and 2015-16, but plummeted to 1.8 per cent in 2016-17. Almost 3 per cent of the real GVA of the country came from mining and quarrying during 2014-15, 2015-16 and 2016-17.³² It must be noted that GVA is the difference between GDP and net indirect taxes.³³ Economists argue that the performance of the manufacturing and construction sectors largely depend on the growth of mining and quarrying since the latter provides ores, metals and minerals as inputs to these sectors. The value of ores and minerals (excluding coal), which was exported by the country, had gone up by almost 10 times between 1990-91 and 2010-11, from US\$ 834 million to US\$ 8,581 million. However, it came down to US\$ 5,360 million in 2016-17.³⁴

Ores and Metals in Exports

The Economic Survey 2016-17 shows that the percentage share of ores and minerals in total exports stayed below 2.0 per cent in 2014-15, 2015-16 and 2016-17.³⁵ The economic significance of ores, minerals and metals in exports has reduced in the recent years. The survey also indicates that the percentage share of coal (as fuel) in total imports stayed around 4.0 per cent in 2014-15, 2015-16 and 2016-17. The percentage share of iron and steel imports in total imports stayed more or less 2-3 per cent in the last three years.³⁶

Conclusion

The overall compliance of the state laws with the PESA Act has been weak in the states of Andhra Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Rajasthan and Telangana. It was also found that the states of Jharkhand and Madhya Pradesh have not made their Panchayati Raj Acts compliant with Section 4 of the PESA Act (1996). Therefore, for protecting tribal and forest dwellers living in Scheduled Areas against mining, forced land acquisition and eviction, the laggard states should properly implement the various rules and sections related to the PESA Act. Periodic studies should be undertaken by the concerned ministries so as to assess the effective implementation of PESA Act (1996), Forest Rights Act (2006), LARR Act (2013), MMDR (Amendment) Act (2015) and Coal Mines (Special Provisions) Act (2015). Land-for-land must be a fundamental requirement for acquisitions in tribal areas. The record of land, which is maintained by the revenue official at the village level should be disclosed annually before the gram sabha, for information, so that tribal residents could take suitable legal measures for rectification of wrong entries.³⁷

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³²<https://rbi.org.in/Scripts/AnnualReportPublications.aspx?year=2017>, (accessed Sept 2, 2017)

³³In order to know more, please go to: Gross Value Added (GVA) at basic prices and GVA at Factor Costs, <http://bit.ly/2wyfzbu>

³⁴Table 7.3 A. Principal Exports, page no. A104-A105, Statistical Appendix, Economic Survey 2016-17, Volume 2, <http://bit.ly/2wCDPFA>, (accessed on 6 September, 2017)

³⁵Table 7.3 B. Share and Percentage Change of Major Exports, page no. A106, Statistical Appendix, Economic Survey 2016-17, Volume 2, <http://bit.ly/2wCDPFA>, (accessed on 6 September, 2017)

³⁶Table 7.2 B. Share and Percentage Change of Major Imports, page no. A102, Statistical Appendix, Economic Survey 2016-17, Volume 2, <http://bit.ly/2wCDPFA>, (accessed on 25 September, 2017)

³⁷Dandekar, Ajay and Choudhury, Chitragada (2010): PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts, report commissioned by the Ministry of Panchayati Raj, Government of India, <http://bit.ly/2wQBkym>, (accessed on 6 September, 2017)