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What is This?
Militant Left Radicalism, State and Civil Society: The Centrality of Tribal Land Rights

Recommendations of a National Seminar

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Recommendations of a National Seminar

The growth of militant left radicalism, known as the Naxalite movement in official documents and civil society discussions, has acquired considerable prominence in the public policy discourse, media coverage and interaction with social scientists. The subject has also been deliberated upon in seminars across the country. The Government policy to deal with it has also polarised thinking on how it should be understood and characterised and what would be the most appropriate approach to neutralise its influence. The security establishment and those supporting its viewpoint represent one pole of this intellectual divide while social scientists, activists and those engaged in working with and for tribals constitute the other pole. The former group advocates strong police (armed) action to eliminate the ‘menace’ which is viewed as the greatest internal security threat to the country, while the latter group stresses the removal of the root causes of alienation of the tribals by pursuing a comprehensive agenda of social justice, inclusive development and responsive governance which would eliminate their influence. Of the unaddressed grievances of the tribals, which have caused this alienation, those relating to alienation of their land, involuntary displacement, loss of forest rights are well documented in official reports as well as academic works. One issue which has rarely figured in this discourse is the insensitivity to and non-recognition of community land rights, their appropriation by the state in diverse ways and the failure to restore them despite assurances. A seminar was, therefore, organised by the Council for Social Development on 10–11 December, 2010 which focused on the centrality of tribal land rights in the growth of militant left
radicalism and the role of civil society in getting these rights restored and protecting the tribals from violence by the state and the Naxalites. A paper prepared on the theme by an eminent anthropologist, Professor B. K. Roy Burman formed the curtain raiser for the seminar. Policy makers, academic experts, social activists, tribal intellectuals, lawyers and media persons and those leading social movements for tribal land rights participated in the seminar, which concluded with some of the recommendations in brief presented to the Secretary, Ministry of Tribal Affairs who interacted with the participants.

The deliberations in the seminar spread over nine sessions broadly covered four dimensions of the subject:

1. Nature and variety of present tribal mobilisation for enforcement of their rights with particular reference to the Naxalite movement (referred to in the seminar as Left Wing Militant Radicalism).
2. Issues giving rise to the conflict of tribals with the state and seeking its resolution through these struggles, particularly Left Wing Militant Radicalism.
3. The States’ understanding of this movement and approach to deal with it and its critique.
4. The role, if any, which civil society can play in exerting pressure on the state to pursue a socially just, democratic, and equitable approach to conflict resolution.

Covering the sub-themes of Militant Radicalism—Issues, Tribal Land Rights; State Policy to deal with the Movement; Rights in Forest and Commons; Tribals and Displacement; Struggles for Land Rights; and Governance, the following recommendations were made:

1. The spread of militant left radicalism in central Indian states is not a sudden eruption. It is also not primarily a law and order problem created by an unlawful political formation challenging the legitimate democratic government. It is a political movement which needs to be contextualized in the objective overall current situation of the people involved which creates conditions for its emergence. The tribes are at the centre of this conflict which arises from a deep discontent and neglect with a long history and multiple dimensionality in its underlying causes. These include, among others, loss of land so integral to their existence, deprivation of access to other natural resources, forest and water, unimplemented laws which protect their interests, failure to factor in and counteract extremely adverse implications of the pattern of national development for them and threats perceived to their identity and culture. The flawed approach to tribal development both at the conceptual and implementation level, the lowest position among all social groups in human development index widespread social discrimination and exclusion and denial of self-governance also contribute to the feeling of betrayal which feeds it. While appropriate...
recommendations of immediate nature to mitigate the distress of the tribals are as follows, the deeper nature of the conflict calls for an honest, critical and comprehensive appraisal of the Government’s understanding of the tribes and its problems and the approach to deal with them which have influenced policies and governance in relation to them thus for, how they have negated the tribal ethos and raison d’etre of their social existence and a whole hearted willingness to recognize the wrong inflicted and reverse/ change it to undo the multifaceted injustice done to them. Four decades ago, such an exercise was attempted by the Indian Institute of Advanced Study, Shimla. This has been a long enough gap for a renewal of that exercise. The Ministry of Tribal Affairs may consider sponsoring such a reappraisal to get useful insights for discharging its policy making role in relation to the tribes.

2. The current situation in the insurgency affected areas and the approach of the Government to deal with it has resulted in unprecedented violence and misery inflicted on the tribals. The major acts of violence include incidents of murder, rape, arson, grievous injuries, destruction of their homes, assets and even food grains and preventive detention besides serious disregard for human rights. They have experienced this violence from three sources—security forces engaged in search and combing operations, Naxalites, and vigilante groups supported, funded and armed by the police establishment. Their misery aggravates as the affected areas are also deprived of social amenities and development and welfare programmes due to the reluctance of civil employees and service providers to work there. The concerned citizens and organisations from the civil society who could provide some social support to the tribals and act a bridge to the local administration are not permitted to enter the area of conflict. The media is intimidated by draconian laws and is unable to carry out investigations and report resulting in complete control of the Government over flow of information from and into the area. The suffering of the affected tribals therefore does not even get highlighted let alone redressed. The larger society is ignorant of their actual conditions. This approach has a huge social cost and far from resolving the conflict would push the embittered tribals who are not actively associated with Maoist party into its lap. The government is urged to seriously review this strategy and reorient it to the implementation of a comprehensive agenda of affirmative action focused primarily on weaning away the tribals from the influence of the Maoists. As for acts of violence, it should disband vigilante groups (called special police officers/commandos) and cease to provide support to them in terms of arms, salaries and legal immunity as it is adding inter-tribal animosities to the existing dimension of the conflict. It should, withdraw draconian provisions of special laws, so as to limit the scope of preventive detention. The action of the security forces should be within the ambit strictly of law and Supreme Court directions and it should be ensured that their operations do not result in collateral damage. There should be
credible arrangement for registration of complaints and a transparent and fair enquiry into the acts of violence suffered by the tribals. This would remove the fear of the government in the tribals and combined with affirmative action erode the support base of the Maoists. Alongside, it should also sincerely work for political negotiation with the Maoists to and this conflict.

3. The Public Policy Statement on the Government’s approach to deal with the Naxalite movement attributes the discontent among the tribes to the development deficit and unaddressed grievances and pushes more resources in to the area as a response to it. This view ignores a wide array of factors responsible for this conflict indicated above, the most important being the social injustice caused to the tribals by the predatory actions of state agencies which have deprived the tribal people of their land, and failed to effectively implement laws which protect their interests such as those preventing alienation of tribal land, Panchayat Extension in Scheduled Areas (PESA), Forest Rights Act (FRA), Atrocities Act, Money lending regulation Acts, and laws relating to Bonded Labour, Child Labour and Migrant Labour Acts. There is an urgent need to radically revise the policy perspective and draw up a comprehensive agenda of social Justice in consultation with experts and social activists, and drawing from major recent official reports and other relevant documents which have dealt with the subject in particular and problems of the tribals in general.

4. Top priority should be given to providing efficient, effective and responsive governance in the areas affected by the Naxalite movement. This would involve:
   a. Placing energetic young officials at the district and secretariat levels who are fully conversant with the tribal problems and have the requisite sensitivity for the tribes and are fully conversant with their tribal problems.
   b. Laying down a comprehensive agenda of social justice with particular reference to enforcement of protective laws.
   c. Strengthening the Tribal sub-plan mechanism so as to ensure allocation of requisite resources, designing of need based programmes and their implementation with rigorous monitoring of outcomes.
   d. Restructuring of delivery mechanisms such as the Integrated Tribal Development Programs (ITDPs), Land Restoration courts, and lower level structures to make them receptive, forceful effective and result-oriented.
   e. Vesting of nodal agencies such as Ministry of Tribal Affairs (MoTA) at the centre and Tribal Development Departments at the state level, with necessary powers status vis-à-vis other sectoral Ministries/departments for assertion of their view point, Tribal Research Institutes should be strengthened with necessary resources—financial and manpower—and requisite autonomy for discharging their role of providing authentic expert advice.

f. Making effective use of constitutional bodies like and National Commission for Scheduled Tribes, Tribal Advisory Council to raise issues which concern the tribals. Enhancing their capacity for fulfilment of this role by proper selection of members and importance attached to their reports.

g. Capacity Building of Gram Sabhas.

h. Putting in place a transparent and efficacious mechanism, internal as well as external, of enforcing accountability of officials for their performance and ensuring corruption free delivery of services and benefits.

i. Rejuvenating the traditional tribal institutions and reorienting their role in the current situation.

5. The framework of the Integrated Action Plan (IAP) to accelerate development work in the tribal areas is flawed in design and operational structure. It does not take into account the priorities of the affected population. The structure of Implementation has no element of people’s participation and advice of experts. The untied financial resources and accent on infrastructure development is oriented towards facilitating security operations rather than meeting the felt needs of the local people. The IAP should be comprehensively revised to incorporate priorities identified by experts and community representatives of the tribes. This should also include confidence building measures among the traumatised tribals to neutralise the current demoralisation and despair in the people.

6. The National Tribal Policy has been under preparation since 2006. The revised draft of this policy prepared in 2008 is yet to be finalised and notified. It is learnt that the document is to be considered by the National Council for Tribal Welfare which was set up in September, 2010. It would be desirable to discuss the draft of the National Tribal Policy with the tribal communities in various states along with prominent anthropologists, social activist organisations representing tribal interests and leaders of social movements operating in tribal area so as to build a consensus on vital issues before it is finalised and notified.

7. In the recent past, three committees have deliberated on the problems confronted by the tribals and the reasons for the spread of Naxalism in tribal areas. These committees are (a) the Expert group on prevention of alienation of tribal land and its restoration headed by B. N. Yugandhar (2004); (b) the standing committee on Inter-sectoral issues relating to Tribal Development, headed by Mungekar (2005); and (c) the Expert group on Development challenges in Extremist Affected Areas headed by D. Bandopadhyay (2008). The recommendations of these committees should be appropriately dovetailed into the National Tribal Policy before it is finalised.

8. The Fifth Schedule to the constitution contains special provisions for protection of the interests of the Scheduled Tribes and confers powers on
the Governor of the state to make regulations for peace and good
governance of an area covered by the Schedule, prevent or restrict transfer
of land by or among members of the Scheduled Tribes and regulate money
lending and allotment of land among them, direct that any particular Act
of parliament or state legislature shall not apply to a scheduled area or
shall apply subject to such exceptions or modifications as she may
specify. The schedule also provides for a Tribal Advisory Council to
advise the Government on matters affecting the tribals. Even these
provisions, limited as they are in protecting the interests of the tribals,
have not been used at all. The Governors have chosen to act on the advice
of the Council of Ministers rather than making up their own mind after
getting feedback from diverse sources. Besides, the tribals require an
authentic frame for self governance which the Fifth Schedule does not
provide. The Sixth Schedule contains some features of such governance.
Therefore, the provisions of the Fifth Schedule should be modified by
incorporating relevant features of the Sixth Schedule and other relevant
provisions after broad-based consultations with the tribal intellectuals,
social activists, community organisations and activist groups working
among the tribals. Until this is accomplished, the President should issue
necessary directions to the Governor on the modalities of preparing the
report which may include modes of gathering authentic feedback about
the impact of development and governance on the tribals. A detailed
format may be prescribed for this report and the Governor may be advised
to undertake frequent travel to the tribal areas to have a firsthand view of
the situation and interact with the tribal community leaders, experts and
informed sections of civil society.

9. The development and economic policies which have adverse externalities
for the tribals in terms of dispossession from land, loss of access to forest,
degradation of environment, displacement from land, habitat and cultural
territory, influx of large-scale non-tribal immigrants into their area should
be reversed or appropriately changed. This should be combined with strong
governance arrangements to render prompt justice to the tribals against
assault on their rights and entitlements and protection against exploitation
and violence.

10. The existing laws for preventing alienation of tribal land, regulating money
lending, etc., have to be considerably strengthened to achieve their
protectionist objective. The changes to be effected have been identified in
the Yugandhar report committee (2004) of the Ministry of Rural Development
(MoRD). This should be accompanied by massive legal literacy on a con-
tinuing basis, strong, inexpensive and user-friendly institutional arrange-
ments with provision of legal aid for expeditious delivery of Justice which
inspire confidence in the affected persons. The structures of implementation
have to be reformed and made accountable with rigorous monitoring and
evaluation of the impact in terms of outcomes for the complainant.
11. The economic situation which creates conditions for alienation of tribal land such as food insecurity, non availability of consumption and production credit, low productively agriculture, unremunerative prices for agro-forest produce, insufficient wage employment suited to their skills needs to be addressed by focused intervention in respect of each of them.

12. The unimplemented/poorly implemented laws crucial for restoring tribal rights, such as PESA (1996) and FRA (2005), should be rigorously enforced in the light of the recommendations of the committee in the Ministry of Panchayati Raj on PESA and Ministry of Forest Environment on FRA which looked into their respective problems. The political and bureaucratic resistance to implementation of these and other such laws should be effectively neutralised.

13. The community should be recognised as a land and land-based resources owing legal person. All community land management systems which failed to get recognition should be identified as per the assurance given by the Government in 1987. A comprehensive survey of tribal community rights should be carried out by involving the respective Gram Sabhas where these lands are located. Necessary changes in the land reform laws and land records system so as to recognise community as a land and land-based resources owning legal person should be carried out. The control over land in areas so identified should be restored to the respective communities.

14. Customary rights relating to the use of land shown in the land records as government/public by the tribal people should be recognised and entered in the land records. The colonial legality that the sovereign is the owner of all land in its territory and rights of the individual/groups are linked to the sovereign authorisation should be reversed.

15. The practice of recording all land above a 10° slope on hilly tracts irrespective of ownership and occupancy should be stopped forthwith. Necessary changes may be made in the survey and settlement regulations and revenue code. Such lands should be surveyed in consultation with the community of each settlement to enable recording of their rights, occupation and uses of land as per their customary practice. All such occupations should be restored to erstwhile users of land should be formally recognised and restored.

16. The distorted interpretation of the role of the chief of the community should be corrected by issuing a clear and comprehensive order reflecting the customary practice. All areas affected by erroneous views of the community chief should be identified with the participation of the Gram Sabha. The land which was under the chief’s management and appropriated by Government due to wrong interpretation of the customary law, should be restored to the community.

17. Land Survey and Settlement regulations in all States with tribal population should be reviewed. Detailed guidelines about recording of community ownership and control over land and its use by individuals should
incorporated in them. The survey and settlement operations henceforth should be carried out with active participation of the Gram Sabhas in a manner that the rights of the community and of individuals in land, forest and water bodies as settled by the Gram Sabha are fully and unambiguously recorded.

18. The banking laws should be amended to enable banks to extend institutional finance for development activities to the community pursuant to its recognition as a legal land and land-based resources owning person.

19. State policies have also dispossessed tribals by characterising and categorising some ethnic groups as pre-agricultural tribes and relocating them away from their forest habitat on the plea of orienting them to settled agriculture. In the process, the affected groups lost their traditional sources of livelihood while at the same time they were not assisted adequately to become settled agriculturalists. These cases should be identified with the help of experts, knowledgeable local persons and tribal leaders. The identified groups should be assisted with allotment of land, if not already done, and enabled to cultivate it with necessary financial assistance, training and technology extensions.

20. Tribals have also been dispossessed from their land as a result of not only leasing/transfer of their land by the Government for mining and industrial activities but also degradation caused by them due to weak mining and environmental laws, and poor enforcement of even these weak provisions rendering their lands unfit for cultivation or diminishing their productivity potential. No help is provided by the government in such cases to the affected tribals to get their degraded land restored by the polluting agency and compensation for loss of its productive potential. Also, no legal action is taken either against the polluting industries/lessee for this damage. To render justice to the tribals (as also to others similarly affected) where private/community owned/occupied land is degraded by the activities of an agency—public or private, making it uncultivable or causing loss of or diminution in its productivity potential, provision may be made in the concerned land laws and environment laws or a special law may be enacted as Kerala has done recently, requiring that the affected person/community shall be paid compensation and the land shall be restored its earlier potential by technological intervention at the cost of the agency. Non-compliance of the provision may be made a punishable offence. The Gram Sabha of the concerned village should be competent to register complaints of this type and the cases should be disposed of by a competent agency at the block/sub-divisional level. The affected tribals should be provided legal aid for fighting such cases.

21. A number of state policies and actions of its agencies in different sectors whether by ignorance or design have led to dispossession of tribals from land under their occupation. The affected tribals are too powerless to raise these issues and get justice. State Governments may get comprehensive
study of such policies and actions and their impact on the tribals carried out by a competent research institution. Based on this material, the MOTA/Tribal Development (TD) department of the concerned state Governments may take up the matter with the concerned Ministries/Departments to have the concerned policies changed and actions reversed to help the tribals get back their land.

22. In pursuance of the International protocol signed by Government of India, directions were issued in the year 2000 to the State Governments to follow a ‘criteria and indicator’ approach to forest management which would involve the community in the tribal areas in preparation of the working plan. The forest bureaucracy does not appear to be very keen on implementing this approach as there has been no progress in the matter. The MoTA and Ministry of Environment and Forests (MoEF) may vigorously pursue compliance of this circular and jointly monitor implementation of this method of forestry management.

23. It has been observed that despite the notification of a National Rehabilitation and Resettlement policy, 2007, the agencies responsible for rehabilitation and resettlement of displaced persons have failed to enforce its provisions. State policies which are less beneficial are applied. Where project agencies are entrusted with this responsibility, the local administration colludes with them to deprive the benefits of this policy. Even the assurances made to the displaced persons by these agencies prior to the acquisition of land have not been honoured. No oversight arrangement is in place to look into the grievances and deliver justice to them. This was brought out, for example, in the case of Singrauli where a large number of power plants are being set up by Public/Private agencies. The Government of India should notify constitution of the oversight Institution for addressing such grievances as already provided for in the policy. It should also proactively monitor enforcement of the policy.

24. Absence of a grievance redressal mechanism which is easy to access, transparent, fair and expeditious in enquiry into the complaints and rigorous in follow-up action thereafter leads to a lot of frustration among the affected persons. The unaddressed grievances, force the aggrieved persons to look up to the Naxalites for redressal. A dedicated grievance redressal set-up duly empowered and adequately equipped with facilities from state to the village Panchayat level with provision for rigorous monitoring at each level of the action taken and its outcome for the complainant needs to be created.

25. In the emergent dispensation of the economy, there are many instances of rights violations by private/corporate agencies. The constitution does not empower the Supreme Court and High Courts to issue writ against private bodies. This severely constrains the apex courts from providing effective relief to the aggrieved citizens/communities involved in conflict with the private agencies. The constitution needs to be amended to provide for a writ jurisdiction for the apex courts against the private parties.
26. The amendments to the Land Acquisition Act, 1894 under which privately owned land is acquired compulsorily for development protects has been under consideration in view of the opposition to land acquisition from the affected peasants particularly the tribals in several parts of the country. In the context of the tribals, the notion of ‘Eminent Domain’ on the basis of which private land is compulsorily acquired needs re-visiting. Scheduled areas already constitute an exception to the Eminent Domain as they place restrictions on the transfer of tribal land to the non-tribals. This protection should not be negated by resort to acquisition of tribal land for its subsequent transfer to the non-tribal individuals or organisations owned or controlled by them. Besides, in any case of displacement from land, the tribals should be mandatorily allotted land to replace it whether from the pool of land available with the government under its own account or by way of acquisition from non-tribals in the area.

27. Civil society should play a proactive role in protecting the interests of the tribals in the following ways.

   a. Map out communal land rights systems still in operation and document them.
   b. Exert pressure on the Government to honour its commitment of recognising community as a land and land-resources owning legal person and work towards amending its land laws land record system and getting such lands restored to the concerned communities.
   c. Document various predatory actions of government in depriving the tribals of their land rights and exert pressure for necessary corrective action to restore these rights.
   d. Work for restoration of civilian administration in the affected areas to ensure that basic services and social amenities are available to the tribal living therein.
   e. Highlight the features of development policies and programme which adversely affect the tribals and exert pressure to have them changed.
   f. Exert pressure for implementation of the recommendation of the Yugandhar, Mungekar and Bandopadhyaya Committee reports.
   g. Identify the victims of violence of the security operations, vigilante groups and Naxalites which have been ignored or routinely dismissed without fair investigation. Collect evidence and exert pressure on the state government to take action under the law. Also, refer the cases to ST/Women/Child/National Human Resources commissions, as the case may be, to provide justice to the complainants.
   h. Continue pressure on the government to remove restrictions on free flow of information to and from the affected areas and entry of civil society activists and concerned citizens in to the areas affected by the Naxalite movement with a view to getting first hand information of
their suffering, bringing their complaints to the government, and mobilising relief/welfare work for the victims of violence.

i. Liaise with the major political parties for creating a climate for starting political dialogue with the Naxalites for resolution of the conflict and for political parties to intensify their activities so as to fill up the political vacuum that exists at present.

28. The condition of tribals in the areas outside the schedule is worse than those in the scheduled area as they are not covered by many protective instruments of state policy. State Governments, influenced by non-tribal interests in such areas are unwilling to recommend such cases for scheduling. Rather they recommend cases for excluding some areas from the schedule already included in it. The Central Government should assume a proactive role in scheduling such areas. The existing policy as to the lowest unit most appropriate for scheduling should be settled in consultation with experts, community leaders and social activists/organisations working among the tribals in such areas.

29. The wider context of the movement is represented by a situation where the efforts of marginalized groups to seek a fair share of benefits is frustrated due to their powerlessness on the one hand and the inadequacy of the constitution and political system to generate mutually satisfying adjustments between different contending groups regarding a fair distribution of resources, opportunities and rewards on the other. It is also embodied in the incapability of political structures designed for promoting democratic process to deal with anti-democratic forces in the polity which support or acquiesce in repression against peaceful protest movements mobilization of people against public policies, projects adversely affecting them, voicing of legitimate demands by aggrieved persons and abridgment of human rights on grounds of security, stability, unity etc. This erodes the legitimacy of the State to accommodate diversity and equity which induces the dissatisfied social groups to seek a solution outside the political system. The complex nature of situation calls for a critical appraisal of the Constitution as well as existing political institutions. This task can be accomplished through in-depth intellectual churning by a cross section of civil society over a period of seven to eight days which may throw up some formulations around which recommendations of a long term nature can be made to address major concerns. The Indian Council for Social Science Research should appropriately undertake this task.