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THE PRESIDENT OF INDIA  
NEW DELHI

(THROUGH THE UNION MINISTER OF STATE FOR WELFARE)

I am presenting herewith the Twentyninth Report on the condition of the Scheduled Castes and Scheduled Tribes under Article 338 of the Constitution for the year 1987-89. In the last report, which was my first report, I had reviewed the situation of the Scheduled Castes and Scheduled Tribes in broad terms. In that report one major aspect which came to the fore was that a dualistic system is getting established in our country. The modern organised sector comprises the upper segment of this system while the traditional unorganised sector comprises the lower segment. Consequently even amongst the Scheduled Castes and Scheduled Tribes, two different segments are getting established exactly in the same fashion. The modern organised sector is the leading sector of our developing economy. Therefore all eyes are set on it and everyone is looking at it with fond hope. It was in this context that I had made extensive recommendations in the earlier report so to ensure that the members of the Scheduled Castes and Scheduled Tribes get an equal opportunity and honourable position in both the segments, particularly in the organised modern sector. The real partnership in the grand procession of development cannot remain confined only to reservations in services but must extend to all segments of national life. Only then the system can truly be considered to imbibe the spirit of the Constitution implicit in the protective provisions and the right to equality.

2. The irony, however, is that such a dualistic system is by its very nature inequitous. Therefore if we see the above plea for equity and justice in the broader context of national economy, it will mean a plea merely for sharing of non-justified benefits of an inequitous system. Secondly, even after the policy of equitable sharing is implemented with full responsibility and honesty, it will benefit only a small segment amongst the weaker sections of our society. And here is an extremely regrettable aspect of this scheme. If the system continues as it is, the burden of deprivation and exploitation will continue to increase and will, to a large extent, fall on the members of the same community, bulk of whom happen to be located in the lowest stratum of our system. In this way, a highly anomalous situation is being created. This partnership in injustice in the name of justice acquires appearance of justice. But by the same token in such a milieu, not only

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ignoring broader issues of justice and equity but even opposing the same also tend to be justified. Therefore unless the question of equity and justice is considered from the perception of the people located at the lowest rung of our society, which accounts for bulk of the members of the Scheduled Castes and Scheduled Tribes excepting a small section who have joined the organised sector, the safeguards in the Constitution for these communities will remain, more or less, meaningless.

3. The life of the vast majority of our people is linked with three elements, viz., the right over resources, the right over means of production and the entitlement for labour. These aspects unfortunately have either not been properly discussed or, in case there is some discussion, it is mostly superficial. The reason is that the moment such issues are seriously considered, the very foundation of the vested interests, which are flourishing in the name of modernity, progress and development, gets shaken. But these are the questions which are crucial for the welfare of the members of the Scheduled Castes and Scheduled Tribes. And what is more, they are also crucial for the quality of national life, basic principles and human values. It is in this context that I had decided to undertake a special review of the national scene with regard to these three elements. The present report and the previous one taken together in a way make for a comprehensive frame. This frame can provide the basis for a life of honour and dignity for all members of the Scheduled Castes and the Scheduled Tribes. Moreover the frame can also become the frame for establishment of a social order imbued truly with the ideals of equity and justice.

#### *The Three-tiers in National Life*

4. The situation in our country with regard to the establishment of an appropriate system and suitable milieu for enabling the common man to lead his life with honour and dignity is rather unhappy. The polarisation in our national economy is becoming increasingly sharper. On the one end we have the carefree setting of the modern organised sector. The moment a person steps in this sector, he is free from all worries about his ordinary living for all times. In that worryless life, the only worries are how to retain one's position, how to get as large a share in the comforts and luxury-goods characteristic of that sector and how to somehow move along the high tide of so-called development. On the other extreme is located the unorganised traditional sector. The question before the ordinary people here is that of just two square meals. The only wish of those people, however, in this sector who command the resources and also those who understand the new world, is somehow to join the modern sector, or else to amass similar artifacts of comforts and luxury there itself. Therefore, the general scenario in this sector is that of strife, loot and raw struggle for existence.

5. In this milieu, the growing centralisation in our economy is adding fuel to fire. Whatever is left with the ordinary people is being snatched away on the strength of law or sheer use of force and money power. Whatever is being snatched away from this side is getting accumulated at the other end. In this way not only a dualist but a three-tier structure is getting consolidated comprising, India, Bharat and 'Hindustanva'. The bulk of the members of the Scheduled Castes and Scheduled Tribes are included in this lowest tier of Hindustanva.

6. It is clear that this process in our national life is not in keeping with the intention of our Constitution. It is also against the declared principles. But then how is it happening? I have tried to look into this question in some detail with a view to find a possible solution. There are two basic aspects—one concerns the texture of our legal structure and the other is related to the paradigm of development. So far as the paradigm of development is concerned, we have accepted the path adopted by the western countries as the ideal. Moreover, in a hurry for development

we have accepted the questionable premise of "development first" and given social equity a secondary position. In this approach an important fact of the global system was overlooked that the "dustbin" of a third world was a necessary concomitant of the process of development in the first and the second worlds. In the same continuation, the third world now requires a 'dustbin' of "fourth world". Today in our country Hindustanva has become that very dustbin of development.

#### *Dissonance between Law and Constitution*

7. The present system is patently inequitous. But unfortunately our legal structure has also proved to be its compeer. The warp and weft of our legal system was broadly set during the British period. The basic premises of the system established by the British were those of their own society and its objective was to strengthen the foundations of their empire. The people were subject and the system was a symbol of the Raj. After independence we prepared and adopt a Constitution dedicated to the establishment of a socialistic society based on our own traditions and basic human values. But the structure of the system, over which this crown of Constitution was placed, was totally dissonant with its basic spirit. This dissonance not only continued in the coming years but the situation became still worse. Firstly, the nascent ruling elite came to relish the old system. Secondly, in the hurry for development the incongruities were first ignored and later on they were accepted even as necessary for the maintenance and advancement of the new system. There was yet another important reason for the continuance of the incongruous situation. The law and the rules are concrete and functional while values are abstract. The latter are generally a good subject of thought and discussion which by itself can be a matter of satisfaction. Consequently big mountains of violation of Constitution and human rights could remain hidden behind the small straws of the legal frame.

#### *Right to Life*

8. The most sacred and primary amongst all human rights is the right to life. The right to life does not only mean the right to bare animal-level subsistence; it really means right to live with human dignity. And two crucial elements for a life with dignity are personal liberty and adequate means of livelihood. The form of these elements in real situations can be quite different depending on the specific economic and social situation. For example, in the modern sector they comprise what are known as the fundamental rights. But when it comes to the tribal people, who are located on the other end of the spectrum in the traditional sector, these formal principles in the present context have no meaning. In their situation a self-governing system based on their own tradition and within the understanding of the ordinary people is essential for enjoyment of these rights in the real sense.

9. The situation in relation to appropriate means of livelihood is very complex. Moreover numerous anomalies have plagued the system. So far as the adequate means of livelihood in the organised sector is concerned the formal form is dominant. Every member of this sector has a specified position and whatever the role of that person, irrespective of its utility or non-utility for life he not only can claim due entitlement just by virtue of the membership of the organised sector but can also openly claim entitlements which are not really justified. But in the case of unorganised sector no body is sure about what a member of that sector will finally get. And the situation of each member in the sector may be quite different. Nevertheless it can be said that broadly command over resources, ownership of means of production and due entitlement for labour are three such elements which together determine the situation of an individual and also the community with regard to the appropriate means of livelihood.

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10. Thus, there are five elements which are necessary for life with dignity, self-management at the community level, command over resources by the community, ownership of means of production by the worker, equitable entitlement of labour and personal liberty. These are the basic rights for the human society. These are also the soul of a democratic system. These values have been enshrined in our Constitution in unequivocal terms.

....*And Its Denial*

11. Even though the position about the right to life in the Constitution is crystal clear, yet so far as the right to life of the common man is concerned, it is not only being ignored in practice but is being blatantly violated. The main reason for this situation is that during the British period the natural resources were accorded the status of property under the law rather than being recognised as the basis of life of the people. The irony is that even after the right of property was removed from the list of fundamental rights and in the face of clear enunciation by the Courts about the real intent of the right to life enshrined in the Constitution, the legal frame in that regard in practice remained unchanged in its original colonial form. That is why there is a direct clash at almost every step in the national life between the Constitutional and human right of right to life of the common people and the legal right of property of the more powerful groups. It can be said that in the inequitable distribution of resources during the British period the state and a group of selected people along with the state become the owners of all natural resources including land. But by the same token the common man, who was using those resources for making a living through the ages was deprived of his natural right to make a living from them. This process unfortunately has become still more stronger after independence.

12. In view of this denial of the basic right to life, a big question arises about the nature of responsibility of the state itself. After all in our Constitution the State has been given a special responsibility in relation to social justice. Then how is this all happening? To answer this question we will have to review the different roles of the State in the complex modern situation and the priorities adopted by the State in that regard. The State can broadly be said to have three primary responsibilities, viz., law and order, protection and development. In the anxiety to maintain order and in the hurry for development as also in the dazzle of its glitter, the dark lanes of the State's responsibility for protection of the poor, particularly the Scheduled Castes and Scheduled Tribes, have been often forgotten. Moreover there is no hesitation in supporting the vested interests entrenched in the old as well as the new structures under the cover of policies, principles and laws and even in striking against those whom the State is expected to protect. In some areas, it appears as if law, Constitution, human rights and state's responsibility are all non-existent. This is the biggest irony of our national life which I have tried to present in this report.

13. This phenomenon is an integral part of the inhuman processes of deprivation and destitution which has been continuing for ages. But its scope became much wider and its intensity much higher during the British period. A careful review of the present situation clearly brings out five levels of deprivation, viz.,—(i) non-recognition of rights over resources and restrictions on their use, (ii) Alienation of worker from the means of production, (iii) denial of due entitlement of labour, (iv) bartering of personal liberty and finally (v) the psychological state of accepting deprivation and destitution as justified and proper and demise of self-respect and dignity. It is unfortunate that the processes of deprivation have not only continued at all these five levels throughout our national life, with the bare exception of the organised sector, but at many places it has become much more intense. It will be necessary to start our review with the last level.

*Social Prestige and Dignity*

14. The honour and dignity of a person is dependent on his work, his right over means of production and his right to manage the system. The condition of the members of the Scheduled Castes and Scheduled Tribes on all these counts was deplorable from the very beginning. Hard work fell in their share while command over resources was enjoyed by others. But after independence these people were rendered still more helpless and vulnerable in the face of unholy collusion between the system and the more powerful groups. Firstly, whatever means of production had remained in their hands are also gradually slipping through their fingers. Secondly, there is also a state of near lawlessness in the villages. In this milieu, the remaining resources of the village community are being commandeered in some cases by the stronger people of the village in some other cases by small and big companies and finally in some cases by the State itself ignoring the fact of dependence of the people on those resources for their living and their traditional rights. Who cares and who knows where these people should go? In this raw struggle for existence prestige and dignity for the ordinary people are at best images of a dream world.

15. The biggest irony with regard to dignity and prestige of a people in our country is that the condition of the tribal communities, who are most conscious about self-respect and honour, is the worst. These communities have become completely helpless in the face of the omnipotent system on account of the 'criminalisation' of their social and economic system itself, denial of their rights over resources and non-recognition of their traditional self-governing systems. The forests are the property of the State; therefore it is an offence for the tribal, who has been living in those very forests for the ages, to make a living from these forests. His very presence in the forest is against the law. If a tribal enters the forests with his bow and arrows, it is an offence. If his cattle as usual graze in the forest, they are taken to a kine house. If he takes his traditional brew after worshipping his Gods or in social functions according to his tradition he still becomes a law breaker. He is branded as an offender in all matters concerning his social and economic life only because the law is against him. The criminalisation of the entire communities in the tribal areas is the darkest blot on the liberal tradition of our country.

16. And the saddest thing is that all this has happened and is happening in the name of principles, claiming authority from the Constitution and the law. That is not all. This is being done by a system, which considers itself to be a symbol of justice, rationality and modernity. Those who have been given the responsibility under the Constitution for correcting this anomalous situation have almost no realisation about that responsibility. The first attempt of the System ordinarily is to assert its own position as right and to prove that the others are on the wrong. It is expected that the tribal society should change and adapt itself in accordance with the frame of the modern system. And finally, an attempt is made to convince the people that this is what development really is!

17. Thus, firstly no action has been taken to correct this basic anomaly and even if some action is initiated, one can never be sure as to where it might get stuck. The result is that today there is a state of confrontation in almost all the tribal areas. In this connection I have reviewed in some detail the Excise Policy in the tribal areas. There are clear policy guidelines of the Central Government in this matter. But even after 16 years of their issue they have not been adopted in full by any State so far. Even where they have been adopted, something or the other gets incorporated at some stage of implementation or the other such that the basic spirit of those guidelines cannot be realised. Moreover when people demand implementation of the policy guidelines, they have to face the wrath of the system.

18. I have discussed the issue of Excise Policy in some detail because this issue touches the personal and social life of every tribal. In this case even when a tribal strictly follows the social norms of his community he breaks the law, he is an offender before the law and legal action can be taken against him. Can there be a more regrettable situation than this? Any law in the tribal areas, which makes the social tradition of the tribal people a criminal act, is against the spirit of the Constitution. If social prestige and personal dignity in the tribal areas are to be upheld all these legal anomalies must be done away with immediately.

*Entitlement of the Common Man*

19. The biggest question in relation to the right to life is the entitlement of the common man for his labour input. What can be the meaning of honour and what can dignity signify to a hungry person? The present situation in this regard is unjust. The members of the organised sector first take away from the gross national product what they consider is due to them on the basis of highly inflated and arbitrary entitlements. The members of the unorganised sector have to be content with whatever is left thereafter. The fact is that not even proper valuation has been made of the work of ordinary labourers outside the organised sector including the farmer. It is an irony that the agricultural labourer in our agricultural country whose work is the most skilled, the most arduous, and whose working conditions are the most difficult has been graded as an unskilled worker. This is also the case with other workers in the unorganised sector. Their skills are deemed to be 'non-skills' and their knowledge as 'ignorance'. And all the skilled workers in the traditional sector are gradually becoming a motely crowd of unskilled people, a process which was set in motion as a part of imperial design during the British period. In the case of most of these workers, deprivation has reached the ignominious level of 'biological exploitation', which is not even alluded to.

20. I have referred to in my last report the unconstitutionality of the dualistic system in the determination of wages and salaries for the organised and the unorganised sectors. But this serious constitutional issue has not been even discussed so far in any forum. This duality is at the root of inequity in our country. If the question of justice for the common man is considered in the real sense, then the first step will inevitably have to be equitable determination of wages of the agricultural labourer. It will directly lead to a substantial rise in the price of agricultural commodities. In the end, it will boost the entitlements of all workers in the unorganised sector. Thus a new relationship will be established between the organised and the unorganised. The natural outcome of this process will be that the entitlements of people belonging to the organised sector at the other end will be significantly reduced compared to what they are enjoying today. The members of the organised sector will not easily accept this new deal. But this simple logic and this stark reality about injustice in our national life have to be got accepted by them whether they like it or not. Or else, how can the common man expect to get justice without changing such glaring unjust relationships in our national economy?

21. This is the plain reality about our economic structure. If this reality is ignored it will not be possible even to present the correct analysis of our national problems. And if the disease itself is not correctly diagnosed how can we expect a real cure? For example, from analysis presented in the report it is clear that there is no unemployment in our country. The reality is the so-called unemployment is a part of a big conspiracy by the vested interests which has only one objective, that is, to extract maximum work from the ordinary man with a minimal wage which may be just sufficient for his bare physical survival so that he can contribute his bit until his limbs can move and in the end he is obliged to withdraw from the stage after providing a

"substitute". It is here that deprivation in our country descends to the abysmal level of biological exploitation.

22. The members of the Scheduled Castes comprise a substantial segment amongst the workers in the unorganised sector. In the present situation when the members of the Scheduled Castes do not have anything which they can call their own except their labour and their skills, their struggle for entitlement for their labour is the real struggle for justice; it is also a struggle for the right to life. The first step for social justice in this context has to be due recognition of the skills of the agricultural labourers and conferral on him the status of skilled worker. Moreover his wages should be fixed in accordance with the principles accepted for organised sector such that his wife and children are not forced to go out of their homes in search of work and as a respectable citizen he can also maintain his family with his own earnings.

#### *Rights over Means of Production*

23. Most of the members of the Scheduled Castes and Scheduled Tribes are dependent, in some way or the other, on agriculture. But their condition with regard to the rights over land everywhere is very regrettable. The biggest muddle in this regard has been in the tribal areas, which is continuing even now. Firstly, in many areas there are no authentic papers. Therefore, the position about land such as the size of holding, its precise location, is not properly recorded. Secondly, the laws are much too intricate which are beyond the understanding of the people. According to the present law, any land which is not recorded in the name of an individual is deemed to belong to the state. Therefore the government can do whatever it likes with regard to such lands. On the other hand the ownership, in a way, is bestowed automatically in the favour of a person the moment his name is entered in the records in an appropriate column. The outsiders have taken full advantage of these legal stipulations. Today not only the record is against the people, the entire system is against them. The correct information about cultivation, ownership, etc., concerning land is available only in the village, yet all disputes about land are decided in Courts outside. It is well-known that a simple person has no hope of getting justice there. But he cannot do anything, he is utterly helpless.

24. In many areas, particularly where industrial complexes are being established, there is a state of near lawlessness. The case of Sonbhadra in U.P. is extremely regrettable; the area is witnessing open loot in the name of settlement. The instructions of government and even decisions of Courts are unable to protect the tribal lands. Unless there is a basic change in the present system such that all matters concerning land are decided in the open, in the presence of village people, the tribal people cannot get justice. To leave the entire tribal community at the mercy of an outside formal system in matters concerning land, which is the only basis of their life, is patently unjust and in violation of Constitutional safeguards. A people's movement has been launched on this issue in Sonbhadra. The demands of the people in this vital matter must be conceded. In fact, that proposition should be accepted as the norm for preparation and maintenance of land records for all tribal areas in the country.

25. The most basic question about land concerns entitlement of the tiller of land. Even though the right of the tiller on the land the tills has been accepted in principle in our country, yet in reality his position is the weakest. In my previous report, I had made extensive recommendations with a view to give the principle of 'land to the tiller' a real form. In this context, unfortunately the position at the moment is that it is not even certain that

the tiller of the land can continue to till the land, the question of bestowal of ownership rights remains a far cry. In some states, it is almost impossible even to get the fact of cultivation by a tenant entered in government records. I have given two examples in this regard—one from Bihar (Sole Daltanganj) and another from Andhra Pradesh (Pulimamidi). In both these cases the people, most of whom belong to Scheduled Castes, are cultivating the land but their names do not find a place in the record. They have asked the government to provide protection for their cultivation about which the concerned governments have not taken a clear stand. Therefore, they have resolved to protect for themselves their basic right to till the land.

26. In these cases the issues concerning land record and cultivation appear to be very simple. But some of them involve basic questions. If a person is cultivating a piece of land, then should this fact be not recorded in government papers? Whatever is on the ground must get reflected in the record in some way or the other. If even this simple thing is not being done as a conscious policy in our system it has only one implication. An easy way has been found to ignore the due entitlement on land of the poor people. This position may be legal, but it cannot be said to be just and cannot be accepted as being in accordance with the spirit of our Constitution. Here lack of consonance between the law, justice and Constitution become glaring. And this is not the story of Sole or Pulimamidi alone. Bulk of agricultural land throughout the country is in the clutches of zamindars—absentee or otherwise. The person who tills that land and subsists on it has no relationship with it under the law.

27. All struggles concerning cultivation of land are basically a conflict between two rights. On the one side is the right to life and on the other the right to property. The right to life is basic and much higher than the right to property. Where a person is earning a living by cultivating the land, its ownership cannot be bestowed on him straight away for some reasons, the minimum which can be expected from the government is to ensure that he continues to remain in possession of that land and his right to make a living from it is effectively protected.

28. The first step for protecting the right to life related to land will have to be to ensure that, whatever may be the law, or even if the law is silent on this issue, the person who is cultivating a piece of land continues to be in possession of that land. This principle should be openly promulgated and the fact of possession through cultivation should be entered in government records. Moreover if a zamindar tries to evict a person ignoring this right, the government has the responsibility to provide full protection to the victim. And if a government cannot protect this basic right, no one can take away the right of an individual for self-defence. This is the message of our Constitution.

#### *Bonded Labour*

29. The worst disregard of the right to life is being perpetrated in the case of bonded labourers. Their condition is extremely pitiable notwithstanding governmental statistics and comprehensive plans for their liberation and relief. The coffee plantations of Tamil Nadu are gold mines for their owners but the tribal, who nurtures them through his sweat and blood, is a 'prisoner' there. The limbs of labourers working for big landlords in Daltanganj and Champaran are chained in lieu of five kathas (measures) of agricultural land. In many areas on the border of U.P. & M.P., working in the stone quarries is the destiny of the people;

they can lose their life should they dare to refuse to go to work; their limbs can be crushed; beating is an ordinary thing. Such oppression and such exploitation even after 14 years of the enactment of the law for liberation of bonded labourers, which is in the knowledge of administration, about which even sensitive social workers out of sheer helplessness cannot but turn their face saying 'what to do?' is abominable. It is an open disregard of human rights, which is not merely a matter of regret, but is a matter of national shame for all of us.

30. It is clear that there is one basic defect in the policy about liberation of bonded labourers. The plan of liberation of the bonded labourer, instead of cutting the fetters of his slavery, cuts him away from the support of his life. What is necessary is to cut the shackles of slavery of the bonded labourer besides ensuring that in doing so he is not alienated from his life's support. He has a right on the life support system or the enterprise in which he may be engaged. This fundamental right of his must be protected at any cost, yet the inhuman bondage must also be snapped forthwith. But even this will not be enough. The owners, who are responsible for this crime against humanity, should be externed from those establishments and the labourers must be given the ownership right on the same. This will be the real liberation of bonded labourers.

#### *Right over Resources*

31. The primary resources other than agriculture in the traditional economy are forests, pastures (waste land and water) on which the ordinary people depend for their living. The wrong entitlements over resources of all descriptions started getting established during the British period. It was in that period that the intimate relationship between the resources and the local community which was like that between the mother and the child, was ended and the State acquired monopoly rights thereon. This Colonial process of centralisation has unfortunately got further reinforced under the tutelage of the new paradigm of development which has been adopted in our country after independence. The full implications of this colonial-developmental process are becoming clearer only now. Everywhere the life support system of the local community and the common man at the moment is being snatched away by the abstruse state institutions and big people without any qualms of conscience. In this situation, the people are engaged in a fierce struggle of their right to life. But the system is branding their current use of these resources as illegal and is driving them away taking undue advantage of its authority.

32. The first fundamental change which was effected in this process related to forests. In the new frame, the symbiotic relationship between the forests and the forest dwellers was not recognised and the forests became property of the State. After the state acquired monopoly rights over the forests, a formal system was established for their management which gradually became increasingly comprehensive and also strong. The biggest irony of this change was that the forest-dweller who has a life-long relationship with the forests—which are their very homes, their religion, their culture and their everything—was conspicuous by its absence in that frame. In this formal structure, which recognises only administrative and market relations, an all-out effort has been made to see that these life-long mother-child relationships are transformed into market relationships. How can this be possible? It is on account of this basic lack of understanding, that there is state of confrontation and regime of destruction in almost all the tribal areas which in final analysis means great injustice to the tribal people.

33. The British enacted the Indian Forest Act with a view to acquire formal control over the forests. At the time of reservation of forests, legal formalities were no doubt complied with, but there was no question of people getting justice. Most of the tribal people were forcibly evicted from their homes. The memory of that forcible eviction now remains only in their folk tales. Whosoever could do, prepared agricultural land outside the forests. Even then their living relationship with the forests still continued. Those communities, which are totally dependent on forests have not been able to come over this great tragedy even now. The primitive tribal communities and the shifting cultivators in many areas are still engaged in a struggle of life and death. Similarly, the right to life of the nomadic communities has also been disregarded. Their problems have so far remained altogether unnoticed.

34. It is clear that the right to life at the individual level and the human right of maintaining the identity at the community level in the case of the tribal people have been ignored in the Indian Forest Act. Therefore, this law is not in consonance with the spirit of our Constitution. But since the state itself was one party in this deal, there was no change in it even after the Constitution was adopted and the situation remains as it was before it. In this way, the Constitutional provisions for protection of tribal people as also the human rights have been ignored in the system of management of forests adopted in our country. This is also the most sore spot for the tribal people; this is also the most pathetic tale about the condition of these communities.

35. All the tribal areas were incorporated after independence in larger state units. In this process, no special attention was paid to the existing administrative arrangements and everywhere the system of the larger unit as it is was gradually extended to the tribal areas. Wherever forests were not reserved, the process of reservation was started. The private forests were taken over by the State. In this way, all special features of the earlier management systems evolved in keeping with the local traditions stood derecognised in the new system. But people's life does not automatically change simply because a new system may have been adopted. Therefore, numerous anomalies arose in the field and people really could not accept the new system from the core of their hearts. Consequently there is confrontation in many areas on this count.

36. The process of reservation of forests after independence was largely pursued in a routine fashion. In some cases, mere formality was observed just for the sake of it and even the fact that some people were living in the forests was not taken note of. In this way, the spirit of the law itself was violated. For example, in some cases of Jagirdari forests the original inhabitants were deemed to be encroachers without any enquiry as soon as these forests were taken over by the state. In some cases, no lines were drawn on the spot at the time of reservation. So the people could not know as to which land was being reserved. In some cases, the officer did not visit the spot, yet recommended reservation of the area. Similarly, there were a variety of local practices in each area, like *warkas* in Thane, *dali* in Raigarh and green manure leases in Karnataka, etc., which were not even looked at. Therefore, the old legal arrangements became illegal in many areas just with the passage of new law without any consideration and without any thought. And the tribal became a law breaker.

37. This reservation of forests predictably failed to protect the forests. Firstly, the internal pressure on forests has been rising incessantly on account of growing population and increasing needs of the people. But the biggest devastation was caused by external pressures.

Extensive plantations of mono-culture species after clearing the natural forests in the name of scientific management, establishment of tea, coffee and cardamom plantations, leases of forests produce at throw away prices in the name of promoting industries and establishment of industrial and mining complexes in the name of development, construction of highways, heavy influx of outsiders, eviction of tribals, supply of forest produce for meeting new demands, everything in the end proved to be a big burden on the forests. Consequently, there was ruthless destruction of the forests. The worst effect of this mindless destruction has been on the life of the tribal people. The very basis of their life is getting destroyed. But unfortunately no attention has been paid to this aspect of denudation of forests. For example, food production in our country has increased manifold, but how much loss have the tribal communities sustained in terms of non-availability of food articles from the forests due to their destruction does not find a place in national accounting. In all campaigns for the protection of forests the real culprit, who has destroyed them for quick gains and who continues to destroy them even now, is left out and the full wrath of the system falls on the tribal, who is already under tremendous pressure.

38. While discussing management of forests, besides the issues concerning the life of the people, those relating to environment and national development cannot be forgotten. But a direct consequence of non-recognition of even the existence of the community and not associating it in the management of forests, the position of forests has become very vulnerable. They are like that public property which has no one to look after and, if at all there is one, he too is far away from the scene and has no significant role to play in its protection. It is true that the internal pressure on forests has increased. But the tribal after all brings only a pole or two for constructing his hut, a small branch for making his plough and dead wood for lighting the fire to protect him from worms and insects, wild animals as also from cold during the winter. Nowhere he has built grand mansions. When the tribal clears the forest and cultivates forest land it is under compulsion of his circumstances. If he can be provided an alternative, he will happily accept the same.

39. The main reason for the depletion of our resources is the growing inequality and the rising tide of consumerism. But unfortunately these facets are not even alluded to anywhere. Therefore, the greatest need today is to put stringent check on the consumerist life-style and ensure equitable entitlement in the use of natural resources. For achieving this, it will be necessary that all those vested interests, who have entered into forests for quick gains and establishing big *jagirs*, are ruthlessly suppressed. All plantations small and big, legal and illegal for example those which have mushroomed in Karnataka, should be taken over by the government and handed over to the labourers. If a poor person gets due entitlement over the natural resources, he will be relieved of the problems of the day; only then he will be in a position to think for tomorrow; in that frame he will become the greatest friend of environment. There are some good experiments of partnership of the people in protection and development of forests from West Bengal which are worth emulations. In many areas, people are taking initiative on their own, which deserves to be strongly supported.

#### *Minor Forest Produce*

40. The minor forest produce has an important place with regard to people's partnership in forestry. I had recommended in my previous report that the people should atleast be given full rights over the minor forest produce. The rights presently claimed by the government on minor forest produce even with reference to the provisions of the Indian Forest

Act, are not legal and royalty levied thereon is unethical. The declarations of the Governments of Madhya Pradesh and Bihar last year recognising the tribal people as owners of minor forest produce instead of more labourers engaged in collecting the same, was the first major step towards ending the historical injustice with regard to forest against the tribal people. It is, however, a matter of deep regret that regressive forces got active immediately after this declaration in Madhya Pradesh. And today the situation is that even this great decision is being denied. This regressive step is a mockery of the entire Constitutional ground plan in which the State has been given with great confidence the responsibility of protection of the interests of the tribal people. Will the Governor and the President, keeping aside all sorts of formalities in this regard, ensure that this just decision is not negated and that the subsequent regressive decision does not become a blot in the history of our social justice.

#### *Wild Life*

41. A highly anomalous situation has also arisen in the management of wild life on account of ignoring certain basic facts about the tribal scene such as the tribal people and the wild animals have co-existed reasonably well from times immemorial, that wild life has not been destroyed by bows and arrows and that the real culprit responsible for their destruction is the outsider. Consequently unnecessary restrictions are being placed on the activities of the tribal people and in many cases they are being forced to move out of their homes. Their plea is that they have been living with the tigers through the ages and they can still live with them quite well. But nobody is prepared to listen to them. In many areas their economy has been greatly damaged through measures which are not legal. There is open violation of their right to life, which is not in keeping with the spirit of our Constitution. There is an urgent need for serious review in all these cases both at the level of law and also in terms of actual practice.

#### *Need for a Permanent Solution*

42. The management of forests unfortunately is being done on a purely formal basis instead of seeking participation of the people. There is no doubt a reference about people's participation in management in the new forest policy. But even in respect of implementation of this idea, market forces and formal relations are being relied upon and accepted as the basis. Therefore that decision at the policy level in practice becomes meaningless. In this situation, the conflict between the government and the people has increased and is continuing to increase. There is a state of confrontation between the people and the state almost in the whole of middle India; many of these areas are outside the ambit of the authority of forest departments. The situation everywhere has been deteriorating only because (i) no attention has been paid even to the fully justified demands of the people, (ii) attempts have been made to superimpose the law unilaterally, and (iii) the behaviour of the departmental officers has been repressive. In the end, either the people themselves have risen in revolt against the administration or extremists have taken up the cudgels on their behalf. It is necessary that satisfactory answers are found to the basic questions of the people such as their assertion that the forests are their's and their very life depends on them. It is regretted that instead of attending to the basic questions, the state of confrontation is sought to be resolved by use of force treating the unrest merely as an expression of extremist activity. This will not do. It is necessary that the entire management of the forest is given a fresh look beginning with the first principles. Otherwise neither the forest will be saved, nor will there be a solution of the problems of the tribal people!

*Immediate Action*

43. If the present confrontation between the tribal people and the administration has to end, complete clarity about the issue of land must be reached immediately. The most important thing in this regard is that certain basic premises, which are accepted without any thought, such as, the boundaries of the reserved forests are unalterable and any tribal who is found inside the forest is a trespasser, must be abandoned. The habitations and agricultural lands in many cases predate the reservation of concerned forests; the process of reservation has been faulty in many cases. Therefore people in such cases cannot be treated as trespassers and encroachers. Moreover, whosoever is living in whatsoever manner in the forest cannot be just driven away just like that, unless the government provides him an alternative which is within his capability of use. Until such an alternative is given, the tribal will continue to do what he considers as right according to his understanding. This is his basic Constitutional right.

44. There is only one way to resolve this tangle. The present law and order approach must be abandoned for good and a clear plan of action should be formulated on the basis of mutual understanding and goodwill between the government and the people within the frame of a clear long term perspective. A beginning in this regard can be made with a sort of informal agreement between the people and the government accepting the today's position as it is about the land with the people. In this case, the government on its part should make a commitment that no action will be taken against the people in respect of the land under cultivation unless and until a final action plan has been prepared on the basis of mutual understanding. The village community on its part should take the responsibility of ensuring that there will be no further extension of cultivation in the forest. With a view to create a climate of goodwill, all cases pending in the courts against the tribal people should be withdrawn. Moreover a final decision should be taken in respect of the land of each individual taking into account his specific situation. If this approach is adopted, the present confrontation between the people and the State about the land will end. A plan should be prepared for making this temporary state of peace a permanent one. Such a plan should, *inter alia*, provide for work to the people in the immediate context, protection and improvement of environment and creation of a strong and permanent economic base for the tribal people.

*Waste Lands and Degraded Forests*

45. It is necessary to give special attention to the management of waste lands and degraded forests within the overall frame of equitable rights over resources. So far these resources were either unproductive or were located in remote regions. Therefore nobody had any objection if the poor was depending on and making a living from these resources. But now that there is a good possibility of huge profits being made from them, all eyes are fixed on them. But most of these resources are still the basis for making a living for many amongst the poor. This fact is hardly realised simply because unfortunately the people do not have formal rights over them. Therefore the government can do whatever it likes with these resources. The rich people are trying to acquire rights over them, taking advantage of this invidious situation in the name of development and under the cover of law. Any alternative use of resources ignoring the right of life of the people is against the spirit of our Constitution and therefore unconstitutional.

46. The plea to include industrial establishments and rich people in programmes of waste lands and degraded forest land is not only anti-people but is also detrimental to the national

objective of environmental protection. The perception of the industrialists and rich people about the use of resources is purely commercial guided by profit and loss accounts. The cost of their programmes become very heavy because the design in their case intrinsically involves opposition to forces of nature and confrontation with the common man. Moreover these programmes are knowingly made so expensive so that the poor may not get included in them. In a way, this is a part of the big conspiracy of the rich people which aims at grabbing all these resources at the national level. Moreover the scope of such costly programme is bound to be limited and limited to only better lands. In contrast, the programmes of the poor, based on full use of their personal labour and nature's force, can be taken up on a very large scale without much dependence on financial investment. This will serve the interests of both the poor and the environment best.

47. Thus an opportunity has arisen in the economic history of our country when the resources from which the poor people have been making a living, howsoever meagre and without formal recognition of their rights, can be put to a new use which can enable them to lead a good life. If their right for making a living from these resources is acknowledged, they can have something which they can call their own. If this is to be achieved, industrialists and rich people must be strictly kept out from any programme of waste lands and depleted forest. All contracts and large leases such as the ones in Orissa and Karnataka, should be annulled. Social equity must be given the highest place in the new agreements. Only those persons should be included in the new programme who are prepared to work with their own hands. It is only such a policy, that will help in improving the environment and will strengthen the foundations of national economic development.

48. The marginal resources comprising the waste lands and depleted forests are the last hope of the poor and also the only opportunity for them. If the open loot of these resources by a hand full of persons, on the strength of their control over technology and money resources is not prevented, this last flicker of hope of the poor will get extinguished and perhaps their last opportunity for living with dignity and self-respect will also slip through, may be for ever. There is only one ray of hope in this grave crisis—perhaps the poor people will not accept this injustice!

#### *Water*

49. The right to life of the people in relation to the use of water as a resource has also been compromised in recent times on account of the process of centralisation in its management and entry of capital in its use. The water therefore, is becoming out of reach of the common man who so far was able to use it, employing his own labour and skills and common place technology. The stronger sections of the society are now using water indiscriminately for personal profit with the help of capital and technology at their command. Similarly on another front the State and other formal institutions have acquired control over water in rivers and tanks ignoring the right of people making a living from it. There is great dissatisfaction amongst the fishermen and *kevals* living on river banks. A number of movements have also been launched by them at a number of places.

50. Similarly the interests of formal institutions, and alongwith them those of contractors, in the rivers and tanks in tribal areas have become quite prominent. In this process the traditional rights of the local community have been completely ignored. The people are not prepared to compromise with this situation. A new structure should be evolved with regard to

water resources as well, on the same lines discussed for other resources. The right to life of the people must be kept at the centre. The present trend of centralisation with regard to the rights over water resources must be checked in the interest of social equity. Otherwise, the right to life of the people will continue to be ignored and the Constitution will continued to be violated.

### *Displacement*

51. The other side of the issue of the rights over resources, in the context of their alternative use for development, is displacement. A comprehensive review of the situation about displacement clearly brings out that we have reached a critical stage in the journey of development, particularly in the tribal areas, which can no longer be ignored. The greatest loss in the wake of development has been caused to the tribals and the resourceless people, bulk of whom belong to the Scheduled Castes. Their rights over resources either have remained completely unnoticed or have been only partially recognised because all resources have been treated merely as property. The biggest irony is that a 19th century colonial law like the Land Acquisition Act is being used indiscriminately in the great voyage of development. This law does not admit the concept of the right to life and the will of the Raj has been accorded the hoary status of 'public purpose'.

52. The Land Acquisition Act, in a way, is functioning like an indomitable inanimate instrument for the transformation of the agriculture based traditional system into a modern system. This instrument, in that process, is snatching away from the poor all those natural resources which have formed the basis of their life so far, with the characteristic unconcern and mechanicality of an instrument, for presenting the same to be used as raw-material by the new system. The sharecropper, agricultural labourer, shepherd, hunter, *kevat* and such like do not even exist in the eyes of this law which is concerned only with the so-called owners of those resources. Moreover, the owner of land himself gets compensation only for his ownership right, following the principle of market price or capitalisation of net income. It is not even realised that land to a farmer is the source of making a living with skilful use of his personal labour. The stark reality about the wanderings of a proud farmer, whose honour is inexorably linked with his land, for vending his labour and his deep agony are not even alluded to. Meaningless are to the new world the questions of his honour, his sentiments and even his future!

53. Whatever may be the law on this point but, in my view, the means of livelihood of a citizen and his right to life cannot be taken away. Mere exchange of property is the concern of Land Acquisition Act, the concept of right to life simply does not exist so far as this Law goes. The law governing the acquisition of land, therefore, is not in accordance with the spirit of our Constitution; this law is unconstitutional. That is not all. The process, which is being adopted for the acquisition of land in the field, is unethical and anti-people. Acquisition of land becomes a certainty, once a decision is taken about establishment of a project. Invitation of objections in accordance with the law thereafter is a mockery of the whole system. Thus, even though the letter of law may be followed but its intention is not being honoured. Therefore, the entire process is illegal.

54. The situation in the tribal areas in relation to the displacement is especially a matter of grave concern. The rich natural resources located in these areas are today required for development. But the traditional rights of the people who are fully dependent on those resources for their living, are not recognised simply because they are not formally recorded.

The biggest irony is that the existence of the community and its relationship with the habitat are not even alluded to in any law whatsoever. Moreover all those aspects of life, which cannot be captured within the frame comprising formal rights concerning property and market relations, are conspicuous by their absence. The emotional world of the tribal people is as real as the modern world of concrete jungle, it is much more sublime. Therefore, the protection of this sublime 'world' has also been recognised in the global context as a human right. The present process of land acquisition is not only violative of the Constitutional rights but even that basic human right. The biggest irony is that the state does not hesitate in disowning even the Constitutional responsibility of providing protection to the simple tribal communities, simply because it has taken on its shoulders another grave responsibility of the so-called development.

55. An important question, which arises at this stage, is whether the tribal people should have an opportunity of participation in the fruits of development. It would have been a matter of great happiness for me if effective measures had been taken for this purpose. Today even rehabilitation depends on the mercy of the state. The entitlement of a displaced person is limited only to compensation and that too in respect of that property alone which may be in his name. But even so, what will he do with that money? Some islands of affluence do appear in the tribal areas with development, but they are surrounded by an ocean of misery, social disorganisation and personal destitution. When the tribal, after the loot of his resource-base runs towards the forests for refuge, he is not allowed to set his feet there; they are out of bounds for him. He is obliged to join in the end the army of landless labourer in the countryside elsewhere or to seek the 'security' of city slums and their side-walks. This is the plain reality of the so-called development in the tribal areas nothing short of a great human tragedy!

56. The fact is that the paradigm of development adopted in our country and its compeer life style are themselves incogruous with our socio-economic situation. So long as they are accepted as ideals, establishment of a 'Fourth World' and biological exploitation of the people comprising 'Hindustanwa' are inevitable. Therefore, the very foundation of the new structure is wrong. The minaret of development, which is being raised on the ruins of the economy of the ordinary people with utter disregard of their fundamental rights, cannot be a lasting structure. The people, who are victims of injustice, are now rejecting this paradigm. Whatever may be the formal position about land acquisition, to the ordinary tribal it is nothing but forcible occupation of his land. There is nothing new in this. This has been his experience through the ages, it is his experience even now. There is, however, a difference. Earlier other people were aggressors, today the assault is by government itself. Then where is he to go? And it is here that he revolts—from the core of his heart—against the entire system.

57. A pre-condition for any new use of natural resources should be that the concerned institution or the government should not only provide an alternative economic base for the people, who may have been depending on them for their living, but should ensure that the new life is better than the earlier. Moreover the government must proceed with honesty, it must be fully convinced that whatever is being promised is real and feasible. What is still more important is that the affected people should themselves be able to realise that the alternative will be better for them and they are prepared for it of their free will. If these principles are ignored, any action in that situation which may cause displacement will be against the democratic values and also against the spirit of our Constitution. And any use of force in the name of law and order against the people, who are fighting for establishing their right to life,

who are struggling against the paradigm of development which is not only inequitable, but is violative of the law of the land, is against the spirit of our Constitution and against human rights. In fact, it is a mortal affront to the cultural sensitivity of our country. And bulk of the affected people comprise the simple tribal people, members of the Scheduled Castes and other resourceless people, who have been suffering for ages and whose protection has been entrusted to the State by our Constitution!

### *The Struggle in Narmada Valley*

58. The Narmada Valley Project has a special significance in relation to displacement, rehabilitation and the paradigm of development. This project comprising a series of projects perhaps is the biggest in the whole world. It also has the dubious distinction of being a project which will be responsible for the largest displacement in the whole world. About 70% of the project-affected persons in Sardar Sarovar are members of the scheduled tribes. In this case rehabilitation has been accepted in principle as an integral part of the project. However, the irony is that the struggle of the people is most intense in this valley.

59. The struggle of the project affected people in Sardar Sarovar started with the issue of rehabilitation. The concerned state governments in response to this movement have made many improvements in their policies of rehabilitation and also implementation. I have also been participating in this dialogue personally for the last three years. But the distance between the project-affected people and the government has been gradually increasing. The people now have stopped talking about rehabilitation and have taken a decision not to leave their homes and are offering total opposition to the project itself.

60. It is a pity that the interaction with the project-affected people has been rather devoid of human sensitivity. Attempts have always been made to deal with all sorts of issues only at a formal level. However, thanks to the award of the Narmada Water Disputes Tribunal and agreement of the World Bank, the people in this case were not dependent on the mercy of the State as in other projects, but had something to stand on as a matter of right. But in the absence of necessary grace from the side of the State, the resolution of every single point involved a protracted process beginning with unseemly dispute, struggle, long anxious wait by the people for the outcome and in the end minimal concessions just for passing over the crisis and fulfilling the formality. This process has continued for years. One inevitable consequence of this approach has been that the reliability of government data and their promises came to be seriously questioned. And the people on their part in this process became more and more conscious about their own situation, their rights and the broader context. The people also gradually came to realise the bitter truth that, as the matter stands today, their rehabilitation was not possible.

61. In view of the grave situation and also the larger issues involved in this case, I specially drew attention of the Central and the State governments to certain matters concerning policy, planning and implementation of displacement and rehabilitation in general and about the situation of the tribal people in particular. But it is regretted that there was no preparedness at any level to move away from the beaten track and cross the limits of their respective narrow frames. Consequently even a common policy has not been worked out so far. There is uncertainty on a number of elementary issues such as the definition of displaced persons, their entitlements, the difference between the field situation and government records, dissonance because of changing criteria, neglect of the problems of transition, estimates about the land necessary for rehabilitation,