

**DEMOCRACY, DRACONIAN LAW & STATE: A SOCIOLOGICAL
REVIEW OF THE CHHATTISGARH SPECIAL PUBLIC SAFETY
ACT 2005**

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ABSTRACT

Laws are normally meant to maintain the democratic value in any democracy. When laws turn tyrannical it is also an indication of the State playing in the hands of a few vested interest groups. This automatically leads to the discount of violence and killing by security forces under the garb of 'security concerns'. This is what is happening in Chhattisgarh. The paper delves deep into some of the sociological concerns of anti-people law and what implications does it bring back to the ordinary masses. It also looks at why such laws come in place, particularly in a democratic set-up.

Keywords: Law, Democracy, Anti-People, Draconian Law, Industrialisation, Corporate, Adivasi, Mining, CSPSA, Civil Liberties, Human Rights, Maoist, Security.

INTRODUCTION

India has framed several anti-people laws in the past right from the period of British times. During the British period, it was a means to keep a tight control over people who agitated or revolted against the eminent domain. This was a mechanism by which the British government used to unleash extreme level of violence, conflicts and also kept people on constant fear and terror. Technically the British is no more in India at present,

the Indian rulers are continuing the same acts and laws that were framed to criminalise the Indian society at large.

The birth of Chhattisgarh nearly 15 years ago have been looked at as a process of carving out the resource zone for corporate exploitation. Chhattisgarh is one of the richest states in terms of mineral wealth with 28 varieties of major minerals. Nationally Chhattisgarh contributes 13.64 percent of the income generated through the minerals. The state has heavy deposited of minerals such as iron ore, coal, lime stone, bauxite, dolomite, tin ore, and gold, as well as precious stones like diamond, corundum, alexandrite and garnet. The state along with two other Indian States has almost all the coal deposits in India. The state has the entire tin ore in India. It has 20 percent of iron ore in India, and one of the best qualities of iron ore in the world is in the Bailadila mines in south Chhattisgarh (George 2010A: 7). There are many minor minerals also. Here there came the entire idea of planned mining in the state.

Planned mining and development could be broadly categorised as the pre-globalisation and post-globalisation. While in the pre phase it was employment centric, in the post it is profit centric (George 2010B: 144). Globalisation opened up the unstoppable flow of trade, investment and financial as well as services, technology, information, ideas and persons across national boundaries. Trade, investment and finance hold the key in globalisation (Singh 1998:5). Under liberalisation, rapid industrialisation has brought in several development projects. This displaced Adivasis and Dalits from land and forest. Industrialisation and deforestation has been depleting the water reserves too. Drought is a regular feature in the state, leading to mass scale migration in search of employment. Women are first victims of these, particularly in rural settings (George 2010A: 8). In Chhattisgarh this trend grows at a random pace.

Mineral and mining operations in Chhattisgarh are found in forest regions, which are habituated by Adivasi communities (George 2010B: 144). Most of these areas falls within the Fifth Schedule and therefore come under the ambit of PESA Act, where the

gram sabha is assumedly the supreme body to permit any mining or industrial activity (PESA 1996). In Chhattisgarh section 170-B of Land Revenue Code prohibits the transfer of Adivasi land to non-Adivasis. In the Samata judgment the Supreme Court prohibited any mining activity by non-Adivasis or companies on Adivasi land (Samatha 2001). The Forest Rights Act (MoEF 2007) directs the government to distribute land to the landless Adivasis. These are measures to protect the Adivasi land. Flouting all these land acquisition goes on. Industrialisation appears to multiple conflicts.

The earlier Industrial Policy as well as the current one has given more space to the industrial houses than the local people. Thus it would be only natural that there could be more of unrest among the local people with regards to land acquisition, forest grabbing and eviction. The entire thrust of development is viewed from the prism of mass scale industrial houses where the Adivasis, Dalits and other local communities find no space even to breath.

OBJECTIVE & METHOD

This paper is an investigation about the undemocratic law and the violence caused due to it in the state of Chhattisgarh. The Chhattisgarh Special Public Safety Act 2005 is a law that has been brought into the state for public safety and security from the menace of Maoism. There law has been largely viewed as an anti-people and undemocratic law. Several human rights experts and organisations like PUCL, PUDR view it as a means to curb the democratic space to dissent. This is the context under which this law is critically taken at three levels

1. The Context of the making of CSPSA
2. The intention behind the framing of this Act
3. The Act and its application
4. Discounting State violence under the pretext of public safety

The methods applied in this paper is narrative analysis based on people experience, media reports, reports of human rights violations, reports of organisations working on civil and

democratic rights, experiences of human rights defenders and academic outlooks. This paper also provides a brief sketch of Chhattisgarh state.

CHHATTISGARH – THE CENTRE OF THE DISCUSSION

Chhattisgarh was carved out of erstwhile Madhya Pradesh on 1st November 2000 to become an independent state. It is spread over an area of 135,194.5 sq. kms, which is 4.14 percent of total area in India. It is situated between 17°46' and 24°6' south-north latitudes and between 80°15' and 84°51' west-east longitudes. Chhattisgarh is stretched over an area of 360 kms from north-south and 140 kms east-west with borders of Madhya Pradesh, Uttar Pradesh, Jharkhand, Odisha, Telenghana and Maharastra.

Different forms of social and economic system that contradict one another characterise Chhattisgarh. On one hand there is old feudalistic and unstable agriculture economy, while on the other hand there is highly mechanised industrial economy. These two contradictory social and economic situations have serious implication. Traditionally social structure was once based on Adivasi economy, but later it developed into institutionalised inequality. With the advent modern development paradigm, exploitation, harassment and atrocities have further increased. A set of contractors and traders, politicians and government officials, patwaris and policemen are engaged in unjust corrupt practises (George 2013B).

The cancer of untouchability in society is very conspicuous and its presence in Chhattisgarh is relatively extensive than many other states in India. Though a new sect against casteism developed in Chhattisgarh through the Satnam movement, in the present context Dalits has a pathetic and outcast lifestyle. They are victimised at every level. Caste system is not only almost as strong as in the rest of India but at large is the prime factor in the distribution of resources too. It is decisive in appropriating the power relations, political power and rights over any resources (George 2013B).

The state is rich in mineral deposits. Industries are in large scale in the state. Chhattisgarh contributes 13.64 percent of the minerals income in India. The state has huge deposits of iron ore, coal, limestone, bauxite, dolomite, tin ore, and gold, as well as rich deposits of stones like diamond, corundum, alexandrite, and garnet. Chhattisgarh, along with two other states, has almost all the coal deposits in India. All the tin ore in India is in Chhattisgarh. A fifth of iron ore in the country is here. Rich deposits of Bauxite, Limestone, Dolomite and Corundum are found in the state (George 2010).

THE CONTEXT OF FRAMING THE CSPA

Industrialisation in Chhattisgarh has a long history since pre-independence time. Since the state has been demarked as a rich resource zone, planning mining began in early fifties with the establishment of the planning commission. In all these processes the predominant Adivasi areas were always under the scanner of the industrial sector, which was mostly led by the public sector in earlier days. From mid-sixties, private sector also began to start walking into the resource zones of the state till late eighties. However with the advent of the liberalisation of economy, an array of private companies started pounding on to the resource zones in the state.

In the wake of industrialisation it has faced with massive alienation of local communities particularly the Adivasis, Dalits and backward classes from their land, forests, water and other livelihood resources. Despite plenty of resources such as minerals, forests and fertile lands, the people of Chhattisgarh are very poor. High scale malnutrition, illiteracy and ill health are the end product of this deprivation. Among the other sources of employment, local communities work in mines, croplands and industries mostly as ordinary labour or at best as non-permanent skilled worker. Employment is reducing (George 2013B) leading to mass scale migration. This leads to a conflicting situation with multiple contradictions.

The state has been torn with a long-standing conflict between the Maoist combatants and government security forces during the past two decades. This conflict is in existence for

the past two decades. The southern part of Chhattisgarh has been ripped off with intense violence, particularly in the past 10 years. At one level Maoism and Maoist party had grown to unmanageable extents and on another level the violence and counter violence has also increased to unpredictable magnitude. The chain of violence and counter violence between the Maoists and State agencies has created a situation of internal war in the state (George 2013A).

This situation has led to a situation where all forms of democratic rights and civil liberties have been consistently violated. These violations of civil and democratic rights are in instances of gross violence. Chhattisgarh stands as a classical example in this. The Chhattisgarh Special Public Safety Act 2005 is the best instance to understand the context.

THE INTENTION BEHIND THE FRAMING OF THIS ACT

The presence of the Maoists in Chhattisgarh is there since early to mid eighties. There is no doubt that the question of Maoism is an ideological one and therefore it is political too. This would perhaps need a different way and approach to resolve the problem. The argument of Maoism as an ideology is again challengeable for several reasons since it has not helped the Adivasi cause, despite its claims at certain levels. However it has enhanced the anti-Adivasi process both from the end of Maoists as well as the security forces. Under this pretext several instances of encounters, arbitrary killings have taken place in the state particularly in the Southern region of Bastar. These killings were mostly reported as encounters in the media.

A joint fact finding investigation report by PUCL¹, CPDR² and PUDR³ (1985) report the killing of the Communist Party of India (Marxist-Leninist) activist Ganapathi on March 5, 1985. The team took the versions of the villagers, police officials, and administrative

¹ PUCL is the People's Union for Civil Liberties, which is a national level civil and human rights organisation. In this report

² CPDR is the Committee for the Protection of Democratic Rights and it is based in Nagpur.

³ PUDR is the People's Union for Democratic Rights and it is a Delhi based democratic and human rights organisation.

officials as part of the investigation. Ganpathi was shot dead in a so-called encounter in Thadbeli village of Narayanpur Tehsil in the then Bastar district in the erstwhile MP state. The village is on the border of Maharashtra state. The reports based on various statements come to the conclusion that it was not an encounter, rather a cold-blooded murder and Ganapathi was shot from a close range. In the 1990s several of such encounters were reported by PUCL and PUDR from Chhattisgarh.

The efforts of state repression to combat Maoist menace was met with severe challenges from human rights groups who strongly believed in the democratic spirit and raised issues of arbitrary killings and violence. Between 2000 to 2005 PUCL, CMM⁴, DMM⁵ and other CSOs⁶ raised nearly a dozen such cases⁷. These cases centred on multiple questions such as fake encounters, arbitrary killing, death in police custody, state support to uphold dominant castes in cases of atrocities, state repression on Dalit activists voicing against untouchability, discrimination and atrocities, firing on agitation workers, forest department's violence on women, state repression on people who voiced against industrial violence, movements against land grabbing, land mafias, contractors hand in glove mechanisms with administrative, and Dalit-Adivasi-Women-Workers' rights.

The neo-liberal doctrines of market economy has opened wide the doors of investment in a resourceful state of Chhattisgarh. People's movements and social organisations working on specific issues of concern consistently raised such issues. All these voices of land rights, community rights, human rights to seek space within the democratic set up had turned out to be a big challenge to the state in general however the corporates in specific. Evidently the provisions and rights under PESA was turned defunct as all the meetings were presided by the District Collector or a senior IAS officer from the District

⁴ CMM stands for Chhattisgarh Mukti Morcha. This is a worker's movement based in and around Dalli Rajhara, Rajnandgoan, Bhilai and Durg. Shankar Guha Niyogi started the movement in the later part of 1970s.

⁵ DMM stands for Dalit Mukti Morcha. This is an Anti-caste movement, which began in early 2000s mostly centred in the Dalit pockets Janjgir-Champa, Bilaspur, Mahasamund and Raipur districts. The movement gained momentum with a series of activities.

⁶ CSOs is referred to Civil Society Organisations which includes NGOs, INGOs, Trade Unions, Citizen's forums and other democratic organisations. Even in some cases political parties are included in it.

⁷ I have come across several fact-finding reports and press notes with reference to the same.

headquarter. Further the consistent exposure of the state to delivery citizenry rights turned more critical and crucial in wake of fact-finding reports. It was pertinent for the state to go ahead with such a violent law to protect the interest of the business houses by curbing the rooms for any dissent in democracy. The very idea of this law has been embedded with violence and violations.

THE ACT AND ITS APPLICATION

The Chhattisgarh Special Public Security Act 2005 came into effect on March 21, 2006. There were a lot of opposition from groups that believed in civil liberties and human rights. It began to function as one of the bulwark for the administrations. Interestingly for some time the administration and police did not have much idea about the utilitarian value of the Act. However the Act had definite outlooks. It threw light on what constitutes an unlawful activity is

Section 2 (e) has listed out seven offences in the form of an act or words either spoken or written or by signs or by visible representation or otherwise. In section 3 it lists in five sub-sections by which an organisation could be declared unlawful, methods of appeal for a repulsion under section 4 and under section 8, it gives details of punitive action with imprisonment between two to seven years apart from the monetary fines. There are separate sections dealing with unlawful activities committed by a person as well as organisations. Section 16 (1) categorically mentions that all offences under this Act is essentially cognisable and non-bailable. This means the right to move a bail application does not exist in the lower court. The only court where an accused could appeal is the high court (GoC 2006).

The application of the Act in Chhattisgarh has been extremely draconian. Any voice against the state could be counted as unlawful and a threat to the public safety. Interestingly the then DGP⁸ in Chhattisgarh in a written statement to the Supreme Court said that he believes any movements like Dalit movement, Women's movements, human

⁸ Director General of Police

rights movements, environmental movements are all suspects under the unlawful activities since there are high potentials of Naxalite penetration and hijacking of such movements which are not linked with the CPI. In connection to understand the cruelty and gruesomeness of this Act, I would take two cases under which people were arrested under the sections of the CSPA. Though this would not give one the whole picture, yet it could be helpful to decipher the tip of the iceberg.

Case-1

Dr. Binayak Sen a paediatrician by profession and currently the National Vice President of PUCL was arrested on May 14, 2007 under the Act along with several sections of the UAPA⁹ and Section 120 B (conspiracy) and 124-A (sedition) of the Indian Penal Code. A few days before Sen's arrest one Piyush Guha was detained too. Sen's appeal for bail was rejected by the trial court, then by the revision as well as the High Court. In the first round of bail application the Supreme Court dismissed it in December 2007 (The Hindu 2007).

On August 11, 2008 he filed a second bail application which was filed in the Chhattisgarh High Court. The application was again dismissed by the High Court. Finally the Supreme Court granted him bail on May 25, 2009 on the basis of his deteriorating health conditions. His trial began in the trial court in May 2008. He was convicted for his links with Maoists in their fight against the state and was sentenced to life imprisonment. His bail was revoked he was back in custody. Sen again moved the High Court where his plea was rejected. On April 14, 2011 the Supreme Court granted him bail and also challenged the charges of sedition against him (Venketesan 2011). The case is currently pending in the Chhattisgarh High Court (DNA: 2011).

Case-2

Soni Sori is among the few tribal women from Dantewada to be educated. And to become a school teacher and the warden of a government-run school for tribal children in

⁹Unlawful Activities (Prevention) Act, 1967.

Jabeli, Dantewada. The hounding of Soni and her nephew started with Lingaram's refusal to be part of the SPOs or the Salwa Judum. On August 30, 2009, the Chhattisgarh police abducted Lingaram from his village Sameli, held in a toilet in a police station and tortured him repeatedly for 40 days to force him to become a SPO,. Soni Sori was instrumental in the filing of a habeas corpus petition in the High Court, which led to his release (PUDR: 2012).

Sori was arrested on October 4, 2011 in New Delhi under sections of CSPA, UAPA and several sections of IPC. The allegations against her were of being a Maoist sympathiser and acting as a conduit to extort Rs 1.5 million for the banned CPI(Maoist) from the Essar group. She was handed over to Chhattisgarh police (ToI 2013).She was given electric shocks, sexually abused and tortured before throwing her into Raipur Central jail where she complained of severe body pain and inability to be mobile. Civil society and human rights groups also issue statement that she was brutally tortured in police custody (JSSC 2012).

An independent medical examination of Sori at NRS Medical College, Kolkata, at the behest of the Supreme Court found stones lodged in her vagina and rectum. Sori has said that she was pulled out of her cell at the Dantewada police station on the intervening night of October 8 and 9, 2011 and then taken to SP Ankit Garg's room, where on his orders, three men stripped her, gave her electric shocks and inserted stones into her private parts. She lost consciousness. A few months later, SP Ankit Garg was awarded the Police Medal for Gallantry by the government for his role in a counter-insurgency operation in 2010 (ToI 2013).

After her bail application had been rejected by the trial court and revision court, she appealed before the High Court of Chhattisgarh, which dismissed her bail application on July 9, 2013. On November 11, she got an interim bail from the Supreme Court. Her trial is yet to be over, though she has been acquitted in six of the eight cases filed against her (The Hindu: 2013). Currently she is a member of the Aam Admi Party and had contested

the last general elections to the Lok Sabha from North Bastar Constituency.

Several other cases under the CSPA and allied Acts could be found in the state across the length and breadth. I have come across under trials languishing in jails for more than seven or eight years without any hope for their future discourse. Most of them are alleged Maoists and sections of these laws are applied. A sizeable number among them are from Adivasi communities, particularly women. However there is another fact to the reality that the activities of the Maoists have not reduced since the advent of this law, it has only increased multi fold. People who have infested their thrust in democracy and democratic means are the first targets. This is how it has applied in the current phase.

DISCOUNTING STATE VIOLENCE UNDER SAFETY GARB

The mass scale violence under the pretext of peace campaign by Salwa Judum began in June 2005. It was launched to combat the Naxalites in Dantewada of Chhattisgarh. The Judum members were armed who went on raiding on villages joint operations along side the security forces, suspected Naxalite sympathizers (sangham members) were beaten and brutally killed, their houses torched, and livestock looted. In several instances, the raids continued till the entire village was cleared and all the villagers were compelled to move into Salwa Judum camps (Sundar, 2010).

Operation Green Hunt is still continued and all sort of violence, rape, killings and arson are continued in the name of security measures. Similarly the mass scale police violence and arbitrary torture are not counted at all. Rapist officers like Kalluri are given a departmental promotion who is currently the IG, while others like Amit Garg who inserted stone into the vagina and rectum of Soni Sori have been given gallantry awards. This apart from the hundreds of Adivasis who got killed in fake encounters, or get arrested for providing food, water, shelter or medicines to some Maoist who many times take it on gun-point.

CONCLUSION

Laws are meant for the protection of all sections of citizenry. Legal support in Chhattisgarh is provided to one particular section which could be described as the industrial class-dominant caste combine. All these violent laws and acts are mostly meant to protect the interest of this particular section. While on the other hand the land, water, forests, minerals and natural resources are getting lost. Even the other legal protections like Forest Right Act, PESA, etc. gets subsumed when industrial development is given more importance.

The basic question arises whether this Act provides any safety to the local population. Does it guarantee the human rights and fundamental rights upheld in the constitution through its application? Or is it preventing the masses from exercising their freedom of expressing on questions of their own development where the corporate sector is all prepared to loot the resources. In such a context it seems that the idea of security is only meant for the corporate houses where the Adivasis, Dalits and indigenous communities remain, as the hurdle and security threats to the state in executing such projects at will.

Certainly the Chhattisgarh Special Public Safety Act has strong links with other draconian laws like AFSPA and UAPA, which had contributed to the decimation of people in other parts of the country. However the difference here is that it is mostly to take away the resources over which the Adivasis have their traditional base; it is not just a power struggle alone. Here it is a combination of power struggle and resource struggle, where CSPSA is the handiest one. Such laws are not only draconian in its very design but also creates and multiplies conflicts to the worst

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