

THE GOVERNMENTAL-NAXAL-TRIBAL CONFLICT: LOOKING AT RIGHTS THROUGH THE LENS OF CULTURAL RELATIVISM

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This paper examines the growing foothold of Naxalism in the country today by analysing the varying perspectives in which rights are viewed. The main argument is that apart from an implementation gap in the government's policies, governmental conflict with Naxalism exists because of the difference in the value structure of the government and Naxal ideology, so that what appear as indispensable rights to one, are not so much of consequence for the other. The implications of the justiceability of Fundamental Rights, while Part IV remains non-enforceable under express provisions of the Constitution, is discussed in this context- arguing that while the present State setup emphasises upon individual rights, the Naxal vision of State puts economic and social rights at the fore. Further, the paper differentiates between the Naxal and tribal understandings of rights, aiming to enlighten upon that Naxalism is not exactly a representative of tribal vision of rights, because like the present system, Naxalism also envisions a State, whereas tribal imagination functions outside the boundaries of the State. Thus, a distinction has been attempted between the elite and subaltern version of rights- the fundamental point being that mere extermination of Naxalism is not a worthy enough goal if one desires peace in light of an inclusive regime. To resolve the conflict between different cultural understandings of rights, the mechanism of Capability Approach is suggested, while examining how far the present legal system is conducive for the same.

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I. INTRODUCTION

In 2007, the Indian Prime Minister, Dr. Manmohan Singh, described the growing influence of the Naxalites as “the most serious internal threat to India’s national security.”¹ Subsequent statistics provided by the Research and Analysis Wing of the Indian government seemed to confirm this view in 2009, when they revealed that Naxals were, by then, active across 220 districts, comprising about 40% of India’s geographical area.² Further, it was found that there were 20,000 armed Naxalites and 50,000 regular or full-time organisers mobilizing in support of them³ and all of these numbers are, apparently, growing.⁴ In mainstream media, Naxalites have been largely viewed as the leaders of the Maoist insurgency in India⁵, and are today declared as a terrorist organisation under Unlawful Activities (Prevention) Act, 1967.⁶

The Government is presently struggling to contain the mobilization as evident by the desperate attempts to curb the ‘threat’ by resorting to drastic measures like Operation Greenhunt⁷ and support to Salwa Judum.⁸ Unfortunately, the Naxal Movement continues to gain momentum with attacks becoming even more frequent and violent, as made apparent by their latest activities like the hijacking of trains in

¹ Alan Hart, *India at War With Itself* (14 July, 2010), available at <http://www.veteranstoday.com/2010/07/22/alan-hart-india-at-war-with-itself/> (Last visited on October 4, 2010).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Dr Satya Shrestha-Schipper & Marloes Rozing, *Maoist Insurgency in Asia and Latin America: Comparative Perspectives*, International Institute for Asian Studies (February 2006).

⁶ Schedule, Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

⁷ Nandini Sundar, *The Trophies of Operation Green Hunt*, *OUTLOOK*, July 5, 2010, available at <http://www.outlookindia.com/article.aspx?265964> (Last visited on October 4, 2010).

⁸ Nandini Sundar, *Bastar, Maoists and Salwa Judum*, *Eco & PL. WEEKLY*, July 22, 2006, available at <http://www.cjpkar.org/wp-content/uploads/2009/12/Bastar-Maoism-and-Salwa-Judum.pdf> (Last visited on October 4, 2010).

Jharkhand,⁹ killing of paramilitary,¹⁰ and police force in Saranda¹¹ and Dantewada,¹² Palamau¹³ and Gadchiroli,¹⁴ and further atrocities committed on villagers across districts¹⁵ and political figures in Chhatisgarh.¹⁶ Moreover, Naxalites have spanned across the whole length and breadth of India in as many as 20 of 28 states.¹⁷ One cannot help but wonder what it is that is lacking in the Government's efforts and why it has not been able to deal with the Naxal movement.

Needless to say, the problem of Naxal activities is a complicated one and involves many aspects. However, one seemingly obvious aspect certainly has not attracted the attention it deserves: that is, the cause of Naxalism. Naxalism is largely treated as an impediment and a variety of mindless violence, and thus deemed to erupt out of

⁹ Sujay Mehdudia, *Maoists hijack, release train in Jharkhand*, THE HINDU, April 23, 2009, available at <http://www.hindu.com/2009/04/23/stories/2009042357830100.htm> (Last visited on October 4, 2010).

¹⁰ PTI, *26 CRPF Jawans killed in Maoist Attack in Chhatisgarh*, DECCAN CHRONICLE, June 29, 2010, available at <http://www.deccanchronicle.com/national/15-crpf-jawans-killed-maoist-attack-chhatisgarhs-bastar-880> (Last visited on October 4, 2010).

¹¹ Sudeep Chakravarti, *Naxalism and Angst Of Jharkhand Tribals* (February 3, 2010), available at <http://www.livemint.com/articles/2010/02/03234357/Naxalism-and-angst-of-Jharkhand.html> (Last visited on October 4, 2010).

¹² PTI, *Naxal Attack: Dantewada Police Superintendent, 14 others Transferred*, THE TIMES OF INDIA, June 12, 2010, available at <http://timesofindia.indiatimes.com/india/Naxal-attack-Dantewada-Police-Superintendent-14-others-transferred/articleshow/6039942.cms> (Last visited on October 4, 2010).

¹³ PTI, *Chronology of Major Recent Naxal Attacks in the Country*, OUTLOOK, June 29, 2010, available at <http://news.outlookindia.com/item.aspx?686237> (Last visited on October 4, 2010).

¹⁴ PTI, *Major Recent Naxal Attacks*, THE TIMES OF INDIA, April 06, 2010, available at <http://timesofindia.indiatimes.com/India/Major-recent-Naxal-attacks/articleshow/5766292.cms> (Last visited on October 4, 2010).

¹⁵ *Ibid.*

¹⁶ IANS, *Maoists Kill Chhatisgarh's MP's Son in Bastar District* (September 26, 2009), available at <http://ibnlive.in.com/news/maoists-kill-chhatisgarh-mps-son-in-bastar-district/102245-3.html> (Last visited on October 4, 2010).

¹⁷ *Supra* note 1.

nowhere. This is visible in literature relating to Naxalism, wherein the popular argument for tackling it is stricter policing.¹⁸ The focus, thus, has vastly been on “cure”, than trying to address the issue at its core, in its beginnings. However, in this regard, upcoming trends in the analysis of terrorism¹⁹ suggest that one needs to adopt a systemic perspective to analyse the situation,²⁰ and attempt to find the root of it all. This is the approach which this article will attempt to take. Delving into the roots of Naxalism, the author intends to argue that the conflict at its core arises due to differing perceptions of the Government, the Naxalites and the tribals in regards to the concept of human rights. Consequently, the perceptions of human rights held by the government, the Naxalites and the tribals are analysed and contrasted. In the first section, therefore, the author argues that one of the major areas of the Naxal issue that needs to be addressed is the difference in the way human rights are perceived by the State and by the Naxalites. Thereafter in the second section, the author further argues that, neither the Governmental nor the Naxalite vision of human rights actually addresses the need for a proper understanding of human rights in the context of tribal culture. Hence, in the opinion of the author, not just the Government, but also, Naxals themselves are eroding tribal values. Consequently, mere obliteration of the Naxal movement is not going to serve a useful purpose in the long run. Since tribal values are distinct and unaccounted for in the legal system, the conflict with tribal factions will persist until all relevant aspects of tribal culture are incorporated into the socio-legal and political system.

Based on the abovementioned proposition, in the third section, the author intends to propose a solution in form of a capability approach based model, whereby this entire Naxal-tribal-State issue might be

¹⁸ Dr. Satya Pal Singh, *Tackling Maoist Violence*, 74 POLICE J. 330 (2001), available at <http://www.heinonline.org/HOL/Page?collection=journals&handle=hein.journals/policej174&id=338> (Last visited on April 16, 2010).

¹⁹ Naxalism has been classified as terrorism under various legislative enactments in India, including the UAPA, *see supra* note 6.

²⁰ Fritjof Capra, *A Systemic Analysis Of International Terrorism*, (October 5, 2001), available at <http://www.fritjofcapra.net/articles100501.html> (Last visited on October 4, 2010).

comprehensively addressed. As will be seen, because each identity-Governmental, Naxalite and tribal holds a distinct concept of the basic premise of being human, one of the major conflicts which arises is that the Government, the Naxalites and the tribals connect to vastly different notions of human rights, and are hence unable to arrive at a consensus with regard to how humans are to be treated. Consequently, an effective solution should seek a model which can reconcile all the competing visions of rights at stake, all of which will be done in the third section of this paper.

However, at the outset, the author would like to state that the proposed arguments contain certain inherent limitations owing to the assumptions one necessarily needs to make in any academic discourse. These assumptions revolve around definitional aspects of a certain term, for instance when the term “tribal” is used, the most common and implicit assumption makes the reference to an individual from the tribal community. This assumption has both its advantages and disadvantages, for on one hand, it addresses individuals, which is significant when discussing their human rights. But on the other, it limits the individual to only one identity, i.e. the tribal, and therefore fails to comprehensively address their rights by excluding their other identities. It is to be emphasised that an individual is constructed by more than one identity: the construction is a rather dynamic process, whereby individuals are “an intersection of a multiplicity of identifications and collective identities that constantly subvert each other.”²¹ Hence, the necessity to distinguish between those multiple identities and the individual himself makes it imperative to note that when the term ‘tribal’ is used in this article, the reference is not to an individual from the tribal community, but rather to a identity understood as ‘the tribal’. Similarly, the usage of the terms ‘Naxal’ and ‘Naxalite’ implies the Naxal identity, instead of an individual involved in the movement.²² What exactly these tribal or Naxal identities comprises of will be discussed in the body of the present paper. Here, a mere distinction between an identity

²¹ CHANTAL MOUFFE, DIMENSIONS OF RADICAL DEMOCRACY: PLURALISM, CITIZENSHIP, COMMUNITY, 97, 100 (1992).

²² Note however, that the terms ‘tribals’, ‘tribes’, ‘Naxals’, and ‘Naxalites’ in this article refer to individuals who identify themselves with the corresponding idea of the tribal, or Naxal.

and an individual is being made. Clarification of this point is vital because individuals from the tribal community are also the ones who support the Naxal movement, and might even directly participate in it, and thus identify themselves both as tribal and Naxal. Thereby, here the author would deal with the conflict among the ideas that go into making a concept - Naxal, Governmental or tribal. The focus would also be upon how some of these ideas not just suppress, but also strive to eradicate the others via the prevailing socio-legal system working the same way as any liberal universalization programme does²³; in this case, it specifically being the universalization of certain rights termed 'human rights'.

II : NAXALISM VERSUS GOVERNMENT

Today the government is taking all possible measures to exterminate the Naxals who have been classified as a security threat²⁴. One question which naturally arises is - what exactly is threatened? Is its connotation threat to the integrity of the nation, as commonly understood?²⁵ This question becomes even more pertinent in the light of the wide support to Naxals, especially from tribal benches.²⁶ One is intrigued by what it is about Naxalism, which is so attractive that the number of supporters is constantly growing. Going by the ubiquitous nature of the movement, it would be rather naïve to say that the violence erupting is mindless and directed against democracy. As will be seen in this section, more than anything else, the Naxalite is a threat to the values the Indian Government subsists upon.

Though undoubtedly, it cannot be said that tribal concerns have been entirely ignored by the Government, which has long-term

²³ Harbans Mukhia, *Liberal Democracy and its Slippages*, ECO & PL. WEEKLY, January 19, 2002, available at <http://www.jstor.org/pss/4411626> (Last visited on February 4, 2010).

²⁴ Naxalism Gravest Internal Security Threat To Nation, (April 21, 2010), available at <http://www.indianexpress.com/news/naxalism-gravest-internal-security-threat-to-nation-pm/609303/0> (Last visited on October 4, 2010).

²⁵ *Supra* note 5.

²⁶ Biplab Dasgupta, *Naxalite Armed Struggles and Annihilation Campaign in Rural Areas*, 8(4) ECO & PL. WEEKLY 173 (1973)

development goals in ‘Naxal-affected’ regions.²⁷ It has been acknowledged that “Naxalism is not merely a law and order problem, the policy of the government is to address this menace simultaneously on political security, development and public perception management fronts in a holistic manner.”²⁸ One lingering question remains as to what it is that the Government has failed to address, which gives Naxalites such wide support?

To answer this, the author proposes to argue that Naxalism is gaining foothold majorly because of two broad shortcomings in the Governmental functioning: first, because of the contradiction between the policies on paper and the actual practices of the Government; and second, because of the comparatively lower level of emphasis upon economic and cultural rights by the current legal set-up.

A. Loopholes Of Implementation In Governmental Policies

One cannot allege that legislatures, be it either at the Central or State levels, have altogether neglected tribal development from its agenda. Apart from the general provisions for non-discrimination against tribes by law²⁹ or in matters of employment³⁰, the Indian Constitution itself provides for the special category of Scheduled Tribes.³¹ This category was created to focus specifically upon the development of the tribal population of India. In the process, numerous affirmative actions have been undertaken under the Constitution. The State has been directed to make special provisions for the advancement of Scheduled Tribes.³² Further, reservations in appointments to public offices³³, and provisions

²⁷ Special Correspondent, *Rs. 50 Crore a year to Develop Naxal-hit and Backward Areas*, THE HINDU, August 7, 2010, available at <http://www.thehindu.com/news/national/article557814.ece> (Last visited on October 4, 2010).

²⁸ GOVT. OF INDIA, STATUS PAPER ON THE NAXAL PROBLEM, (March 13, 2006) available at http://www.satp.org/satporgtp/countries/india/document/papers/06mar13_naxal%20problem%20.htm (Last visited on October 4, 2010).

²⁹ Article 14, Constitution of India, 1950.

³⁰ Article 16, Constitution of India, 1950.

³¹ Article 342 (1), Constitution of India, 1950.

³² Article 15 (4), Constitution of India, 1950.

³³ Article 16 (4A), Constitution of India, 1950.

in favour of Scheduled Tribes with regard to promotion have been made.³⁴ Not only this, predominantly tribal areas have also been given the status of Tribal Areas³⁵ and Scheduled Areas³⁶, and a report by a Commission appointed by the President, on the administration of these areas, along with the welfare of tribes in States is mandatory.³⁷ The creation of such areas was essentially to maintain the autonomy within the tribal society and to prevent diversion of resources traditionally under tribal control to non-tribals.³⁸ Dr. Ambedkar's explanation in the Constituent Assembly Debates expounds upon these provisions, "Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas, and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is, that in the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to this Schedule, the ordinary law passed by Parliament or by the local legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In one case it applies unless excluded and in the other case, it does not apply unless extended."³⁹

However, in spite of all these provisions, there is a feeling among tribes today that their ancient community rights are being grossly violated,

³⁴ *Ibid.*

³⁵ Article 244(2), Schedule VI, Constitution of India, 1950.

³⁶ Article 244(1), Schedule V, Constitution of India, 1950.

³⁷ Article 339(1), Constitution of India, 1950.

³⁸ GOVIND SADASHIV GHURYE, *THE SCHEDULED TRIBES OF INDIA*, 166 (1980); *See also*, B.G. Halbar, *Nehru's Approach Towards Tribal Societies*, in *STATUS OF SCHEDULED TRIBES IN INDIA*, 261 (H.C. Upadhyay, ed., Transnational, 1999).

³⁹ B.R. Ambedkar, *Constituent Assembly Debates: 15th Nov 1948 to 8th Jan 1949*, available at <http://www.ambedkar.org/ambcd/63B3.CA%20Debates%2015.11.1948%20to%208.1.1949%20Part%20III.htm> (Last visited on October 4, 2010).

majorly because the benefits of such affirmative action are not filtering down to them⁴⁰, and exploitation by landlords, moneylenders, and big businessmen continues. One example is the corruption involved in the transaction of Tendu leaves, which has a significant role in the tribal economy. The Government regulates the picking of these leaves in terms of standard bags by contractors; however, there is no way of ensuring that they do not extract more than they are meant to. As a result, tribals lose much of their traditional income derived from selling Tendu leaves. But such corruption leads to huge profits for the contractors- the most conservative estimates putting their profit at Rs 1000 per bag.⁴¹ One may contrast these profits with the situation of tribals, who are paid a rupee for a bundle of 70 Tendu leaves⁴². Thus, to earn about Rs 30 per day, a tribal has to collect and bundle more than 2000 leaves per day, which is viewed as being highly unfair.⁴³

However, the more unfortunate fact is that even such meagre figures have been achieved only after Naxal-organised protests to demand a rise in price of Tendu leaves, from 3 paise a bundle to one rupee, and this too for a business with a turnover of hundreds of crores of rupees every year.⁴⁴ The case is similar with bamboo culms, for 20 of which tribals are paid Rs 7 now from the 10 paise in 1981, which may be attributed to Naxal-backed demands. However, a tribal still has to cut, collect, and bundle 100 bamboo culms to earn Rs 35 per day.⁴⁵

⁴⁰ Arundhati Roy, *The Trickle-down Revolution*, 7, OUTLOOK, September 20, 2010, available at <http://www.outlookindia.com/article.aspx?267040> (Last visited on October 4, 2010).

⁴¹ Arundhati Roy, *Walking with the Comrades*, 3, OUTLOOK, March 29, 2010, available at <http://www.outlookindia.com/article.aspx?264738> (Last visited on October 4, 2010).

⁴² Gautam Navlakha, *Days and Nights in the Heartland of Rebellion*, 5, SANHATI, April 1, 2010, available at http://sanhati.com/wp-content/uploads/2010/05/navlakha_daysnights_v3.pdf (Last visited on October 4, 2010).

⁴³ Nirmalangshu Mukherji, *Arms Over the People: What Have the Maoists Achieved in Dandakarnya?* 45(25) ECO & PL. WEEKLY 17 (2010).

⁴⁴ *Supra* note 41.

⁴⁵ *Supra* note 42.

The situation with regard to cultivable land is not any better. Numerous studies suggest that non-tribals have usurped lands traditionally used by tribals on a large scale in the post-independence years.⁴⁶ Moreover, tribes have also suffered at the hands of public servants. Prof. Furer-Haimendorf, in this context, relates the story of a tribal individual whose cultivable land was usurped by a non-tribal; and even though the Special Deputy Collector restored the land to the former, the subsequent cultivation of the same by him was stopped by the Tehsildar, the revenue inspector and the Patel, in conjunction with the non-tribal.⁴⁷

All such examples go on to illustrate that the gap between governmental policies on paper and actual functioning has been the cause of Naxalite aggravation for quite some time.⁴⁸

Apart from agricultural-pasture lands and forests, mines are another important resource in tribal areas⁴⁹, and probably the most attractive ones in the light of industrialisation. Considering their significance, disputes have frequently arisen on the extent to which tribal people have an exclusive right to retain and exploit these mines. The legal aspect of this point has been highlighted in the case of *Samatha v. State of Andhra Pradesh & Ors.*⁵⁰ The case was brought before a three-judge bench of the Supreme Court by way of Special Leave Petition by an NGO called Samatha, which works in the Eastern Ghats area for the protection of rights of the tribal communities. The case was related to Government-owned land in Scheduled Areas, which the Andhra Pradesh Government had allegedly leased out to private mining industries, while denying tribals

⁴⁶ R Murdia, *Land Allotment and Land Alienation: Policies and Programmes for Scheduled Castes and Scheduled Tribes*, 1205, ECO & PL. WEEKLY, Vol. 10, No. 32 (1975).

⁴⁷ CHRISTOPH VON FURER-HAIMENDORF, *TRIBES OF INDIA: THE STRUGGLE FOR SURVIVAL*, 59, 60 (Oxford University Press, 1992)

⁴⁸ Raman Dixit, *Naxalite Movement in India: The State's Response*, 4(2) JOURNAL OF DEFENCE STUDIES, 23 (2010)

⁴⁹ Ministry of Mines, § 7.10, National Mineral Policy, 1993, available at <http://mines.nic.in/nmp.html> (Last visited on February 5, 2011)

⁵⁰ *Samatha v. State of Andhra Pradesh & Ors.*, 1997 (4) SCALE 746

the grant of title deeds. The main issue before the Court was whether the law, which prohibits the transfer of land to non-tribals in Scheduled Areas⁵¹, would also apply to transfer of Government-owned land to a non-tribal? In this regard, the Court held the opinion that the transfer of immovable property between a member of a Scheduled Tribe to a non-Scheduled tribe in these areas is null and void. It held that the non-tribal transferee acquires no right, title and interest in that behalf in furtherance of such sale,⁵² while citing *Manchegowda v. State of Karnataka*⁵³, whereby similar sales had been held voidable. The Court further upheld the constitutionality of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959⁵⁴ by referring to its prior decision.⁵⁵ However, the major point of contention in the applicability of the Regulation for the Government here was the meaning of the term “person” provided therein. It was contended that the term, “person” included only natural persons and not the government. However, the Court held that a reading of Schedule V⁵⁶ along with the Regulation⁵⁷ shows that, “there is an implied prohibition on the State’s power of allotment of its land to non-tribals in the Scheduled Areas.”⁵⁸

Moreover, the Court issued certain directives to the Central and State government, summed up as follows:

- a. That every Gram Sabha shall be competent to safeguard the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a scheduled tribe;⁵⁹

⁵¹ §3, Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

⁵² *Supra* note 50, ¶45.

⁵³ *Manchegowda v. State of Karnataka*, (1984) 3 SCR 502.

⁵⁴ *Supra* note 50, ¶46.

⁵⁵ *P. Rami Reddy v. State of Andhra Pradesh*, AIR 1988 SC 1626.

⁵⁶ ¶5(2)(b), Schedule V, Constitution of India, 1950.

⁵⁷ §3(i)(a), Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

⁵⁸ *Supra* note 50, ¶87.

⁵⁹ §2, The Constitution (Seventy-Third Amendment) Act, 1992.

- b. That minerals are to be exploited by tribes themselves either individually or through cooperative societies with financial assistance from the State;⁶⁰
- c. That at least 20% of net profits made by the grant of mining lease by the government should be kept aside as permanent fund for development needs apart from reforestation and maintenance of ecology;⁶¹
- d. That the transfer of land in a Scheduled Area by way of lease or renewal of lease to non-tribals, corporation aggregate, etc. stands prohibited to prevent their exploitation in any form;⁶²
- e. That in States where there is no legislation which provides for total prohibition of mining leases of land in Scheduled Areas, a Committee of Secretaries and State Cabinet Sub-Committees should be constituted, and decision should be taken thereafter;⁶³
- f. That a Conference of all Chief Ministers, Ministers holding the Ministry concerned and Prime Minister, and Central Ministers concerned should take a policy decision for a consistent scheme throughout the country in respect of land belonging to the tribals.⁶⁴

But unfortunately, implementation by the Government subsequent to the judgment has been inadequate and ineffective. Questions have been raised with regards to the binding nature of the judgment, considering that it seeks to determine the duties of the Central government as the same was not even a party to the matter. In the Hon'ble Court's own words, "The above bird's eye survey discloses the enormity of the yawning gap

⁶⁰ *Supra* note 50, ¶117.

⁶¹ *Ibid.*

⁶² *Ibid.*, ¶238.

⁶³ *Ibid.*, ¶129.

⁶⁴ *Ibid.*, ¶131.

between making of the Acts and their proper enforcement.”⁶⁵ Considering such circumstances, there is no surprise that Naxals get such widespread tribal support. The Supreme Court of India has recognised that “terrorism often thrives where human rights are violated”, and “the lack of hope for justice provides breeding grounds for terrorism.”⁶⁶

Further, the Ministry of Mines and Minerals proposed an amendment to Schedule V to overcome the effect of the *Samatha* judgment, and facilitate leasing of land in tribal areas;⁶⁷ thereafter in the tenth Five Year Plan it was stated, “It should be noted however, that amendment of the Coal Mines (Nationalisation) Act, 1973 may not be sufficient to attract private investment in this important area. It will also be necessary to make other amendments to overcome the hurdles placed in the way of private mining in notified tribal areas owing to the dictum passed in the *Samatha* case,”⁶⁸ all of which of course, was desirable under the mandate of liberalisation, privatisation and globalisation with regard to the new economic policy, calling for development. The central point of regard in all these examples is the exclusion of tribals from the developmental process by improper implementation of policies. Naxalites have cited this as a major cause of grievance making them feel neglected in the growth story of the nation.⁶⁹

B. Cultural Relativism And Clash Of Ideologies

Poor implementation of policies is not the only governmental shortcoming. Sometimes, the policies themselves come into conflict with

⁶⁵ *Ibid.*, ¶31.

⁶⁶ Anil Kalhan, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller, & Jed S. Rakoff, *Colonial Continuities: Human Rights, Terrorism and Security Laws in India*, 20(1) COLUM. J. ASIAN L. 93 (2006-07).

⁶⁷ Ministry of Mines, Government of India, *Note for Committee of Secretaries regarding amendment of the Fifth Schedule to the Constitution of India in the light of the Samatha Judgement* (16/48/97-MVI), available at <http://www.mmpindia.org/Mining%20secret%20note.htm> (Last visited on October 4, 2010).

⁶⁸ Planning Commission, Government of India, *Draft Approach Paper: 10th Five Year Plan*, ¶3.58, available at <http://www.mmpindia.org/planning.htm> (Last visited on October 4, 2010).

⁶⁹ *Supra* note 48.

the Naxalite vision of progress. It is worth noting that Naxalism is a Marxist-Leninist vision of the State⁷⁰, which hopes to establish a society where there is equitable distribution of resources.⁷¹ The tribal community traditionally has had a community centric conception of rights, as illustrated by the examples cited previously.⁷² In this context, support to Naxalism is basically a result of the Naxal vision of human rights, which leans more towards economic and cultural rights as opposed to the governmental conception of human rights, which is civil and political in nature. This conflict is reflected in the justiciable nature of the predominantly civil and political Fundamental Rights⁷³, as opposed to the non-justiciable nature of socio-economic rights mentioned in the Directive Principles⁷⁴ under the Indian Constitution.

This individual-centric version of human rights of the Government is further visible in its policies concerning tribal welfare and development. The very definition of development, as perceived by the Government, is shaped by its focus on individual, rather than community development. This phenomenon may be seen in two aspects: first, the governmental policy of allocation of forest resources and mines to corporations, even as it antagonises the tribal population⁷⁵ and second, the large governmental reliance on the trickle-down effect to benefit the tribal population.⁷⁶ Additionally, a preliminary examination of some early Governmental policies shows that India has leaned towards large-scale industrialisation⁷⁷,

⁷⁰ Bela Bhatia, *The Naxalite Movement in Central Bihar* 40(15) Eco & Pl. WEEKLY 1541 (2005).

⁷¹ *Ibid.*

⁷² Rajesh Dev, *Human Rights, Relativism and Minorities in North-East India*, 39(43) Eco & Pl. WEEKLY 4748 (2004).

⁷³ Article 32, Constitution of India, 1950.

⁷⁴ Article 37, Constitution of India, 1950.

⁷⁵ Amitendu Palit, *Mining in India: Separating Growth from Development?* 110, INSTITUTE OF SOUTH ASIAN STUDIES INSIGHTS 2 (August 2010), available at http://kms1.isn.ethz.ch/serviceengine/Files/ISN/120583/ipublicationdocument_singledocument/411ef1f7-4ae5-449d-8bf9-b354a21e7bfb/en/ISAS_Insights_110.pdf (Last visited on April 16, 2011).

⁷⁶ *Supra* note 40.

⁷⁷ GOVIND CHANDRA RATH, *TRIBAL DEVELOPMENT IN INDIA: THE CONTEMPORARY DEBATE* 78-79 (Sage, 2006).

which implicitly involves actors (for e.g. public officials themselves), who again deprive tribals of control over resources, which the latter deem to be traditionally theirs. Even the proposed legislative amendments to overcome the ‘disability’ imposed by the *Samatha* judgment are indicative of this attitude. It is thus clear that the conception which the Government holds as development is not the conception held by the tribals themselves.

In light of this gap between the governmental and the tribal understandings of rights, it is frequently argued that non-Western societies⁷⁸ with their typical emphasis on community therefore need a socio-economic based human rights regime, which is inherently more community centric.⁷⁹ Consequently, the community-centric communist ideology, as propounded by Naxalites is propounded as appropriate, since it can usher in the regime of human rights with which the tribal population can most relate to. Naxalism thereby, fills the gap, by apparently offering a solution viz. more emphasis on socio-economic rights.

Thus, the point of conflict between the Government and the Naxals is not that Naxalism poses a threat to security of State, because both the Governmental and the Naxal ideology envision a State to propound their model of human rights. Rather, the conflict is about the threat posed by Naxalism is to the value system of civil and political rights which, as already seen, largely drives the functioning and policies of the Government.

As supported by a vast body of literature, in light of such differences of values, cultural relativism is to be taken into account.⁸⁰ The doctrine of cultural relativism holds that human rights can be understood only in context of the culture wherein they function.⁸¹ As

⁷⁸ The term “*non-Western society*” here, refers to any society which cannot trace its roots to the Graeco-Roman civilization of Europe existing roughly between 8th century B.C. and 5th century A.D.

⁷⁹ Bilhari Kausikan, *Asia’s Different Standard*, 92 FOREIGN POLICY 26 (Autumn 1993).

⁸⁰ Fernando R. Teson, *International Human Rights and Cultural Relativism*, 25 VA. J. INT’L L. 869 (1984-1985).

⁸¹ *Ibid.*

values upon which human rights are based differ greatly with varying cultures, consequently there is no absolute universality as such about human rights.⁸² It is thus argued that due to the different values of non-Western societies⁸³ and specifically, the tribal community here, that human rights should be framed in such a way by the State that they are in consonance with those values. Resultantly, the conception of development and policy making by the Government should reflect this regime of human rights along with the set of values embedded in them. Social and economic disparities weigh down the tribes, and civil and political rights mean little in absence of the former. The argument propounded by Naxals is based on the premise that they shall sincerely attempt to change the status of socio-economic rights from that of being merely desirable to indispensable. In accordance with these claims, a “minimum agenda of economic and social rights to secure basic material conditions for human agency that modern experience has shown to be both necessary and effective”⁸⁴ is in order.

III: NAXALISM AND GOVERNMENT VERSUS TRIBAL

The idea that is now gaining prominence is that the contradictory viewpoints of Naxalism and the Government are, apart from poor implementation of policy, majorly in regard to the manner in which human rights are constructed i.e. individual-based or community-based. However, merely replacing individual based values of the Government by the Naxal community-based values will not result into the solution of this conflict with tribals. This is because the tribal values, though are in consonance with some of Naxal values like, community-based growth, they do not exactly coincide. The author will now proceed to argue that Naxalism, for all its popularity in tribal belts, hardly caters to the tribals’ vision of human rights.

⁸² Jack Donnelly, *Cultural Relativism and Human Rights*, 6 HUMAN RIGHTS QUARTERLY 400 (1984).

⁸³ *Supra* note 78.

⁸⁴ David Beetham, *What Future for Economic and Social Rights?* 43 POLITICAL STUDIES, (1995).

A. Differentiating Between The Naxal And The Tribal Conception Of Human Rights

A review of the history of the Naxal movement will tell us that it was organised and channelised mostly by political parties of the communist outlook, which, appalled by the socio-economic injustice prevalent in the society then, hoped to bring a 'democratic regime' in India.⁸⁵ These well-intentioned parties hoped to achieve the India of their dreams by concentrating specifically on the tribal communities, which seemed especially piqued by the post-independence set-up. It is, however, contentious that tribals dreamt of an India at all; let alone sharing the same dreams as these political parties, for India. This debate essentially entails asking what the tribes have been aspiring for. At this point, it is noteworthy that merely by raising this question; it is possible to make an implicit but pertinent distinction between the Naxal aspiration and tribal aspirations.

The starting point of the post-independence tribal protest is often also thought of as the starting point of the Naxal movement i.e. 2nd March 1967, when local landlords attacked a tribal youth while he was on his way to plough his land after obtaining a judicial order in the, now famous, Naxalbari village of West Bengal. The attack led to retaliation by tribals, which left 9 tribals and 1 police sub-inspector dead.⁸⁶ It is to be noted here that the dispute was basically of agrarian and/or of feudal origin: an in-fight between tribals and landlords, where the former wanted control over parts of the land, while the latter had no intentions of giving it up. Even the Supreme Court of India has identified the importance that tribes give to land, stating, "Land is the most important natural and valuable asset and imperishable endowment from which tribals derive their sustenance, social status, economic and social equality, permanent place of the abode and work and living. It is a security and source for economic empowerment. Therefore, the tribes have great emotional attachment to their lands."⁸⁷

⁸⁵ P.V. RAMANNA, *THE NAXAL CHALLENGE: CAUSES, LINKAGES AND POLICY OPTIONS*, 84 (Pearson Education India, 2008).

⁸⁶ Rajat Kujur, *Naxal Movement In India: A Profile*, INSTITUTE OF PEACE AND CONFLICT STUDIES (2008), available at http://www.ipcs.org/pdf_file/issue/848082154RP15-Kujur-Naxal.pdf (Last visited on October 4, 2010).

⁸⁷ *Supra* note 50, ¶10.

It is interesting to note that there is a long history of disputes of this nature in India, dating even before colonial times, when the *diku- adivasi* (non-tribal) in-fighting and rivalry with regard to land was quite evident.⁸⁸ A tribal village functioned under the Mandali system whereby the Mandal head encouraged cultivation of waste lands under him- which were granted to the tribals.⁸⁹ Gradually though, among other factors, with the increasing pressure of revenue collection by the British Government (so much so that there was actually a commercial British venture - Midnapore Zamindari Company, which made its profits solely via revenue collection⁹⁰), the ancient rights of tribals increasingly started to be ignored⁹¹. Mandal heads concentrated on profits, arbitrary taking away of land from tribals and restriction upon gathering of forest produce became common.⁹² That is precisely the point of time when tribal resistance to such instances began developing.⁹³ Thus, essentially it boiled down to a fight for land, all over again.

The ‘problem’ with the tribal community was and still remains that they have little idea about the concept of State. Tribals had hardly experienced the full thrust of the Mughal rule, and the increased emphasis upon revenue collection in colonial times, to say the least, bewildered them.⁹⁴ It was beyond them how ancient tribal rights like those relating to forest produce collection and pasture-lands could be regulated by State. For them these were communal rights which were non-derogable and were possessed by them by virtue of being an *adivasi*. The notion of individual property as opposed to community-owned property, which

⁸⁸ Swapan Dasgupta, *Adivasi Politics in Midnapur, c. 1760-1924*, in., *SUBALTERN STUDIES IV: WRITINGS ON SOUTH ASIAN HISTORY AND SOCIETY* 101-135 (Ranajit Guha ed. Oxford University Press, 1985).

⁸⁹ *Ibid.*, at p.105.

⁹⁰ *Ibid.*, at p.110.

⁹¹ *Ibid.*, at pp.113-114.

⁹² *Ibid.*, at p.112.

⁹³ *Ibid.*, at p.117.

⁹⁴ *Ibid.*, at p.106.

came with the State's claim of property over forests, pastures and other tribal lands, more or less was beyond their understanding. Their sorry predicament is canvassed by Arundhati Roy as, "The perennial problem, the real bane of peoples' lives was the biggest landlord of all, the Forest Department. Every morning forest officials, even the most junior of them, would appear in villages like a bad dream, preventing people from ploughing their fields, collecting firewood, plucking leaves, picking fruit, grazing their cattle, from living. They brought elephants to overrun fields and scattered babool seeds to destroy the soil as they passed by. People would be beaten, arrested, humiliated, their crops destroyed. Of course, from the Forest Department's point of view, these were illegal people engaged in unconstitutional activity, and the Department was only implementing the Rule of Law."⁹⁵

All these facts go on to illustrate that the tribal resistance has always been fixated upon the demand for restoration of these communal rights to custody of the tribals. It can, thus, be inferred that the notion of justice for tribals focuses largely upon the assignment of their traditional rights back to them; any deviation from these supposedly perennial communal rights, in their eyes, is injustice in itself.

Contrasting this with the Naxal movement, one observes that Naxalism perceives justice to tribes as a means to the end of Indian emancipation. However, tribal thought exists not in terms of India and its development, but merely in terms of tribal-communal rights. And tribal-communal rights, for them, are not a means to the end of a better State.⁹⁶ The achievement of these rights for them is the end itself. Herein comes the conflict between the elite and subaltern- between communities who can imagine a nation, communities for whom the idea of a nation-State makes sense (for example, Naxalites), and the community, which has never understood 'national' constructs (here, the tribal).⁹⁷ Hence,

⁹⁵ *Supra* note 41.

⁹⁶ Dipesh Chakrabarty, *Radical Histories and Question of Enlightenment Rationalism: Some Recent Critiques of Subaltern Studies*, in *MAPPING SUBALTERN STUDIES AND THE POSTCOLONIAL* 274 (Vinayak Chaturvedi, ed., Verso, 2000).

⁹⁷ *Ibid.*

Naxals constitute the elite, all of whose actions are directed towards upliftment of not just people, but people of a nation. It is thus inferred that the threat of the Naxal movement is concerned only with a particular State set-up, manifested in the open criticism of the capitalist State and liberal values. In contrast the tribal movement is implicitly critical of the institution of State in itself.

Conflict between tribal and nation-State, thus arises, for tribes have never imagined the nation-State.⁹⁸ This implies their inability to grasp the ‘magnanimity’ of the State. It is observed that, if the existence of the State is threatened, almost every right is derogable by the State, as is proved by the exclusion clauses to the same effect of the various international conventions on human rights today. For instance, the International Covenant on Civil and Political Rights of 1966 (ICCPR), provides for the protection of right to life, however, even this is not absolute, and can be taken away by law made by the State.⁹⁹ Similarly, right to liberty can be denied, as per law established by the State.¹⁰⁰ Right to freedom of expression is subject to “national security”.¹⁰¹

The Indian Constitution itself provides for the suspension of most of the guaranteed Fundamental Rights during an Emergency- when the security of the State is threatened.¹⁰² Additionally, under domestic legislation it is to be noted that sedition is, ‘waging war against the State’ and is a crime equivalent to homicide.¹⁰³ Further, as put forward by Professor Upendra Baxi, “Despite the history of the radical logic of the right to self-determination, it is clear that both the extant international regime and the regime of

⁹⁸ Gayatri Chakravorty Spivak, *Discussion: An Afterword on the New Subaltern*, in *SUBALTERN STUDIES XI: COMMUNITY, GENDER AND VIOLENCE* 305-334 (Partha Chatterjee & Pradeep Jeganathan, eds., Oxford University Press, 2000).

⁹⁹ Article 6, International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc A/6316 (1966).

¹⁰⁰ Article 9, International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc A/6316 (1966).

¹⁰¹ Article 19. 3. b., International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966).

¹⁰² Article 358, Constitution of India, 1950.

¹⁰³ Article 124-A, Indian Penal Code (Act 45 of 1860).

multinational states do not recognise the human rights of ‘nationalities’ to secede from the existing nation-State framework and frontiers.”¹⁰⁴ All these instances illustrate that there is significant importance accorded to the socio-legal fiction of a nation, and hence a nation-State¹⁰⁵ - a fiction which needs to be preserved at all cost, if one goes by the aforementioned sets of legislations, whereby any idea presenting the remotest threat to a nation-State has been nipped in the bud.

For many people, the idea of a nation-State is not a novel one, but what about communities that have never imagined any nation?¹⁰⁶ Is not imposing upon them, a regime of human rights, developed and exercisable under the State set-up, also violative of the basic tenets of cultural relativism? Even if it is unequivocally accepted that multicultural States like India recognise that “different cultural and civilizational traditions have diverse notions of what it means to be human and for humans to have rights,”¹⁰⁷ as long as such a set-up does not grant freedom to think outside the Statist arena¹⁰⁸ it largely entails giving in to the liberal flaw of forced universalization.¹⁰⁹ This essentially would force upon people, a set of values which they do not inherently abide by. The author is referring to claims similar to those which today act to oppose globalisation - because it is an imposition of Western values,¹¹⁰ the way Naxals themselves oppose the inflow of foreign capital, for, while eroding resources, it does little for

¹⁰⁴ UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS*, 188 (Oxford University Press, 2006).

¹⁰⁵ Benedict Anderson, *Imagined Communities*, in *NATIONALISM* 89-95 (John Hutchison & Antony D. Smith, eds., Oxford University Press, 1994).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Supra* note 104 at p.193.

¹⁰⁸ Statism refers to the paradigm whereby all socio-political relationships are conducted under supervision or control of the State. *See also*, RONALD H. NASH, *FREEDOM, JUSTICE AND THE STATE*, 1-34 (University Press of America, 1980).

¹⁰⁹ MAUREEN RAMSEY, *WHAT’S WRONG WITH LIBERALISM?: A RADICAL CRITIQUE OF LIBERAL POLITICAL PHILOSOPHY*, 123 (Continuum International Publishing Group, 2004).

¹¹⁰ MOHAMMED EL-SHIBINY, *THE THREAT OF GLOBALISATION TO ARAB-ISLAMIC CULTURE*, 15 (Dorrance Publishing, 2005).

tribal development.¹¹¹ However, there is a difference: considering that both the State and Naxals seek to achieve their goals through the State mechanism, which has never been part of the tribal culture - is that not an imposition of “foreign” culture upon tribals?¹¹² Under the same system, granting them rights, and promises of development of the kind that the tribal has never been familiar with, one is left to ponder upon what meaning it holds for them? Ultimately, the tribals’ protest to such universalization also ends up being viewed through the lens of terrorism - albeit of a different kind than the Naxalite - a zodiac wherein “any practice of the ‘right’ to secession involves forms of both State and insurgent ‘terrorism’, a site where human rights have no presence, whatever may be said about their future.”¹¹³ And the future promised by all elite groups is that of the inclusion of tribals in the mainstream.¹¹⁴ The core argument here boils down to the fact that the tribal understanding of development is vastly different from the mainstream understanding of the same term. Additionally, rather than addressing this difference accordingly in the legal system, statist practices are only trying to obliterate this difference by making tribal understanding coincide with mainstream understanding via a process popularly called ‘mainstreaming’. However, an analysis of the term ‘mainstreaming’ produces merely the effective imposition of values, which were never held by those on whom they are imposed. For when will tribals realise the importance of ‘development’ and try to ‘develop’? - Only when they understand the values on which the foundation of ‘development’ has been built. Therefore, it is not just in context of civil-political rights versus social-economic rights in a nation-State paradigm which evokes arguments of cultural relativism, but also conception of functioning in a Statist and outside a Statist arena. As a result, to analyse the present conflict there are three sets of cultural values which need to be accounted for: The governmental, the Naxal, and the tribal: The Naxal is not representative of the tribal identity, and is to be treated as distinct.

¹¹¹ *Supra* note 46.

¹¹² *Supra* note 41.

¹¹³ *Supra* note 104.

¹¹⁴ *Supra* note 27, 28.

B. Naxalism As A Bridge Between The Government And The Tribal

In spite of the difference in values of the tribal and the Naxal, Naxalism nevertheless plays an important role by acting as a link between Governmental and tribal values and conception of human rights. It has already been discussed that efforts are constantly being made by the Government to bring the tribals into the so-called mainstream society, and hence implicitly impose upon them a paradigm of development which is foreign. In this respect, it is to be further noted that the mainstreaming process is not new, and is not only on account of development. In the important tribal belt of north Bastar, Baba Bihari Das had started an aggressive drive to “bring tribals back into the Hindu fold”¹¹⁵, while he campaigned for Hindu revivalist ideas and became an important political influence.¹¹⁶ Those who did not come forward to join the Hindu fold were declared ‘Katwas’ or untouchables.¹¹⁷ Thus, mainstreaming has also been done to inculcate values imagined as Hindu¹¹⁸, for tribal development for an imagined nation-State.¹¹⁹

Another concrete instance of how tribes do not understand the State is that they do not respect the symbols of ‘development’, i.e. of the Statist notion of development.¹²⁰ As canvassed by a Superintendent of Police from Dantewada, “The problem with these tribals is they don’t understand greed. Unless they become greedy, there’s no hope for us. I have told my boss, remove the force and instead put a television in every home. Everything will be automatically sorted out.”¹²¹ This is exactly what

¹¹⁵ *Supra* note 41.

¹¹⁶ People’s Union For Civil Liberties, *Bastar- Development And Democracy* (1989), available at [http://www.cscsarchive.org:8081/MediaArchive/liberty.nsf/\(docid\)/4AA75E34CDC46FD865256A4000231EEA](http://www.cscsarchive.org:8081/MediaArchive/liberty.nsf/(docid)/4AA75E34CDC46FD865256A4000231EEA) (Last visited on October 4, 2010).

¹¹⁷ *Ibid.*

¹¹⁸ ANDREW BUKSER & STEPHEN D. GLAZIER, *THE ANTHROPOLOGY OF RELIGIOUS CONVERSION*, 51 (Rowman & Littlefield, 2003).

¹¹⁹ *Supra* note 105.

¹²⁰ *Supra* note 88.

¹²¹ *Supra* note 41, at p. 1.

mainstreaming entails- in the words of the Indian Home Minister, P. Chidambaram, discarding “museum cultures”¹²² in which tribals are still steeped, and replacing them with ‘modern, progressive values.’ Foucaultian thought recognises that this is where one largely goes wrong in assuming: that one’s culture is an evolution from the other - that modern cultures are superior; this construction of the present as an improvement, or even as mere fruit of the past, rather than just a different reality, is what results in conflicts.¹²³ Based upon this assumption though, former British Prime Minister, Tony Blair evangelically said, “The best defence of our security lies in the spread of our values. But we cannot advance these values except within a framework that recognises their universality.”¹²⁴ Underlying this statement is a universalization project - a kind of civilising mission, not so different from the colonial times¹²⁵, which can uplift tribals from the ‘backwardness’ riding them. “What is named as universal is the parochial property of the dominant culture, and that ‘universalizability’ is indissociable from imperialist expansion.”¹²⁶

It is therefore, noted that mainstreaming comes into play when a particular set of values are to be exterminated for another to prevail. Since the very notion of contemporary understanding of human rights is embedded into a particular set of values, that is the liberal-Western tradition, many of the modern concepts arising from the same remain beyond the comprehension of people not familiar with these values; pursuant to which these values are forced upon them. The attempt here is to put forth the fact that there essentially is a gap between the subaltern tribal, and the elite Statist, so that neither one can see the other’s perspective without discarding their very own foundation. The mainstream does not see a

¹²² *Ibid.*

¹²³ Stuart Dalton, *Beyond Intellectual Blackmail: Foucault and Habermas on Reason, Truth and Enlightenment*, in *E-LOGOS* (2008): 12, available at <http://nb.vse.cz/kfil/elogos/history/dalton08.pdf> (Last visited on October 4, 2010).

¹²⁴ PHILIPPE SANDS, *LAWLESS WORLD: AMERICA AND THE MAKING AND BREAKING OF GLOBAL RULES*, 1 (Allen Lane, 2005).

¹²⁵ *Supra* note 104 at p. 45.

¹²⁶ JUDITH BUTLER, ERNESTO LACLAU & SLAVOJ ZIZEK, *CONTINGENCY, HEGEMONY AND UNIVERSALITY: CONTEMPORARY DIALOGUES ON THE LEFT*, 15 (Verso, 2000).

world without States- even if people secede from a State- they have to form their own new State in order to be recognised. Human rights are guaranteed only when one has citizenship of a State,¹²⁷ rather than to humans. All this makes for an interesting thought as to how, in such a scenario, where one cannot understand the other's words, can the elite and subaltern even communicate? How is the gap between the tribal and the State bridged?

This is where Naxalism which speaks the Statist (elite) language while claiming to fight for tribal (subaltern) rights, steps in. However, it obviously entails a huge compromise on behalf of the tribal, because, Statism – the regime which emerges from the limitation of thoughts within a State set-up, is the language of the dominant culture- and when one begins to speak the language of the dominant, one also deeply compromises upon understanding the ideas of the non-dominant, as well-illustrated by George Orwell.¹²⁸ *Samantavad* (feudalism) is new for the tribal¹²⁹, for the latter has not known the –isms'.¹³⁰ The tribal has *ladai* (fight)¹³¹ with those who oppress it, not *krantikari* (revolutionaries) against a *sadi-gali vyavastha* (rotten system).¹³² Tribal understands *badal* (change),¹³³ but does not understand the meaning of *kranti* (revolution)¹³⁴, or *nayee janwadi kranti* (new democratic revolution)¹³⁵, because it is not looking to change society to the end of a nation. This is vocabulary induced by Naxalism.¹³⁶ But it is only this vocabulary, which the Government can understand and accept. The Government cannot fight that which it cannot understand. What the dominant does not fight against, is ignored. It never comes to the fore, never has its demands heard, and never has aspirations or rights which matter discussed.

¹²⁷ *Supra* note 104.

¹²⁸ GEORGE ORWELL, 1984 at pp. 372-388, (1st World Publishing, 2004).

¹²⁹ *Supra* note 70 at p. 1540.

¹³⁰ *Supra* note 88.

¹³¹ *Supra* note 70 at p. 1540.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

Thus, the limitations of the tribal world are beset by the limits of human rights language.¹³⁷ In view of tribals, “even the improbable feat of translating all human violations into human rights violations will not transport that which cannot be named into the sphere of the named.”¹³⁸ Thus the tribal remains excluded from this elite vision of human rights,¹³⁹ while the elite vision (here, specifically the Naxal), presumes that the State run by it, is representative of the community, which in reality remains only a presumption.¹⁴⁰

IV: THE WAY TO CONCILIATION

It has been seen that elite thought- be it Governmental, or the Naxalist, does not even begin to address the concerns of the tribal because of the different Lacanian symbolics¹⁴¹ they function in, implying their mutual exclusivity of purpose. As already seen, Naxalism acts as a bridge between tribal and Governmental values by providing a Statist flavour to the latter. But when tribal aspiration and thought is not directly addressed, tribal culture begins to denigrate, and one wonders where the right to preserve one’s own culture¹⁴² finds its place. However, can the solution be achieved merely by replacing the Governmental values with the tribal to define human rights in the current legal system? The present section analyses this aspect, and attempt to propose an appropriate method to incorporate tribal values into the legal system.

A. Significance Of Contemporary Human Rights In Traditional Societies

Human rights, as largely understood today, are deemed to be essential for protecting human dignity.¹⁴³ However, the same concept of

¹³⁷ ROBIN HOLT, WITTGENSTEIN, POLITICS AND HUMAN RIGHTS, 24 (Routledge, 1997).

¹³⁸ *Supra* note 104, at p. 8.

¹³⁹ *Supra* note 88, *supra* note 104, at p.44.

¹⁴⁰ Yash Ghai, *Human Rights and Governance: The Asia Debate*, in 15 AU YR. BK. INT. LAW (1994) 5.

¹⁴¹ JEAN-MICHEL RABATÉ, THE CAMBRIDGE COMPANION TO LACAN, 38-47 (Cambridge University Press, 2003).

¹⁴² Article 29 & Article 30, Constitution of India, 1950.

¹⁴³ Oscar Schachter, *Human Dignity as a Normative Concept*, 77(4) AMERICAN J. OF INT’L L., 845 (October 1983).

human rights has also come under attack. It has been stated that “human rights are Western concepts; human rights interfere with the values of our culture; human rights are there to protect criminals; human rights prevent us from doing the job. Human rights are, so it has been said by a distinguished and well-respected traditional leader, monsters.”¹⁴⁴ It is important to emphasise here that such criticism stems from the understanding of human rights as incorporating values which many cultures do not adhere to; as a result of which, human rights become mere tools for cultural aggression by the West in such societies.¹⁴⁵ As already discussed earlier, in this regard, the doctrine of cultural relativism comes to the rescue by arguing that human rights should be framed in accordance with a particular cultural context.¹⁴⁶ However, does that mean doing away entirely with the values which human rights today incorporate? Are present-day human rights completely redundant in non-Western societies?

The truth is that the present regime of human rights is not entirely iniquitous, and does help in reduction of people’s suffering. The present human rights regime goes a long way in uplifting groups who have long suffered the oppression of a particular culture. Today the ICCPR prohibits slavery from being justified in name of any culture¹⁴⁷, so is the case with vindication of women’s rights under the Committee on the Elimination of Discrimination Against Women CEDAW,¹⁴⁸ and the freedom of religion¹⁴⁹ to name a few among others. Lives of people affected by human rights violations have definitely improved over the last sixty years, with the coming in of what Prof. Upendra Baxi terms “contemporary human rights,”¹⁵⁰ to

¹⁴⁴ WERNER MENSKI, *COMPARATIVE LAW IN A GLOBAL CONTEXT: THE LEGAL SYSTEMS OF ASIA AND AFRICA*, 13 (Cambridge University Press, 2006).

¹⁴⁵ Raimond Pannikar, *Is the Notion of Human Rights a Western Concept?*, in 30 *DIOGENES* (December 1982) 75- 102.

¹⁴⁶ *Supra* note 82.

¹⁴⁷ Article 8, International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc A/6316 (1966).

¹⁴⁸ Convention on the Elimination of All Forms of Discrimination against Women, GA res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (1980).

¹⁴⁹ Article 18, International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc A/6316 (1966).

¹⁵⁰ *Supra* note 104, at p. 47-50.

distinguish them from earlier understandings of the rights, which did not emphasise on human suffering; so that in the regime of “contemporary human rights” violation of rights becomes at least visible; if not all remedied, they are at least, addressed.¹⁵¹ One cannot deny that people have borne the brunt of suffering in name of culture the appalling treatment of women and children¹⁵², instances of *Sati* and child marriage in pre-colonial cultures cannot be denied. In such instances, cultural relativism does turn into a façade for abuse of power,¹⁵³ and it would indeed be atrocious to simplistically term contemporary human rights “monsters”¹⁵⁴. On the other hand, non-Western people have been inspired by these human rights. Nelson Mandela, for instance, speaks of the United Nations Charter, “Some in the West saw the Charter as empty promises, but not those of us in Africa. Inspired by the Atlantic Charter and the fight of the Allies against tyranny and aggression, the African National Congress created its own Charter, called African Claims, which called for full citizenship of all Africans, the right to buy land and the repeal of all discriminating legislation.”¹⁵⁵ Among tribes themselves, the filtering of Western thought has improved the lives of many: in the first place, that questions about the status of women in the present and a ‘post-revolution’ tribal society are being raised, and being taken seriously¹⁵⁶, is in itself commendable. Tribal women’s struggle, using the tool of a version of feminism originating in the West to demand equal status as men by inclusion within the public sphere, and against the vices of bigamy and domestic violence, has produced substantial results.¹⁵⁷

¹⁵¹ *Supra* note 104, at p. 42.

¹⁵² Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, 53(3) JOURNAL OF ANTHROPOLOGICAL RESEARCH, 325 (Autumn 1997).

¹⁵³ Paul F. Schmidt, *Some Criticisms of Cultural Relativism*, 787, THE JOURNAL OF PHILOSOPHY, Vol. 52, No. 25 (1955).

¹⁵⁴ *Supra* note 144.

¹⁵⁵ *Supra* note 124, at p. 9.

¹⁵⁶ Vasanth Kannabiran and Kalpana Kannabiran, *Women’s Rights and Naxalite Groups*, 39(45) ECO & PL. WEEKLY 4874-4877 (Nov 6-12, 2004).

¹⁵⁷ *Supra* note 41.

Undoubtedly, contemporary human rights do not cater to values of the tribal, thus resulting in antagonism. But it cannot be denied that in many instances they do help to alleviate suffering of individuals from such societies.

B. *Multiplicity Of Human Identities And The Freedom To Choose*

Considering that contemporary human rights are not completely worthless for even the traditional non-Western societies, it would be highly undesirable to completely exterminate the values of these rights from the legal system and replace them altogether with tribal or Naxal values. This is because individuals move between different identities in different contexts, and even in the same contexts at different times.¹⁵⁸ However, in all such transitions, a common aspect that all humans have to deal with and be protected against, is suffering.

In this regard, it is true that contemporary human rights being rooted in the “illegitimacy of all forms of politics of cruelty,”¹⁵⁹ emphasise upon alleviation of suffering. Since the Nuremberg trials, this particular agenda of human rights: condemnation of suffering has been vehemently advocated.¹⁶⁰ An instance can be sought in the *jus cogens* norms, which de-legitimise practices which cause human suffering.¹⁶¹ Yet ‘suffering’ itself acquires different shades in different contexts. What might be ‘suffering’ in one culture might not constitute ‘suffering’ in another. So while tribals see, for example, taking away of their ancient forest rights¹⁶² as human suffering, for the State, there never existed such a right, and so any reference to such suffering would be a futile attempt. This is where the contemporary human rights fail: by limiting the definition of suffering to just one identity in a cultural context, they effectively fall short of protecting individuals against suffering when they acquire an alternate identity. Thus,

¹⁵⁸ *Supra* note 21.

¹⁵⁹ *Supra* note 104, at p. 49.

¹⁶⁰ HENRY STEINER AND PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 17-29 (Oxford University Press, 2000).

¹⁶¹ *Supra* note 104 at p. 49.

¹⁶² *Supra* note 88.

while contemporary human rights might protect the woman in an individual belonging to the tribal community from abuse¹⁶³, they are unsuccessful in protecting the tribal in the same individual from violation of her rights, simply because her suffering as a tribal is not acknowledged at all in the regime of contemporary human rights. Consequently, only when both the Naxal and the tribal values, apart from the Governmental values are incorporated in the understanding of suffering in a society, can the conflict be solved. Additionally, freedom must be granted to individuals to choose the definition of suffering which they relate to in a particular context or time. This freedom of choice is essential because identities of an individual are fluid, and an individual needs to be protected in reference of each of these identities.

As Prof. Amartya Sen explains, “In assessing our lives, we have reason to be interested in not only in the kinds of lives we manage to lead, but also in the freedom that we actually have to choose between different lifestyles and ways of living.”¹⁶⁴ Freedom, in this respect has two facets. Firstly, freedom that helps in maximising opportunities for pursuing one’s objectives. Secondly, freedom that helps choose a particular option or way of living over the other.¹⁶⁵ If one were to apply this concept in the present discussion, one can formulate a regime wherein human rights focus upon maximising freedom of the people to choose from a variety of understandings of suffering. Consequently, this freedom would allow, first, for multiple understandings of human rights to exist together, i.e. the maximisation of opportunities. As a result, an individual would have multiple regimes of human rights, incorporating and protecting different values, to choose from. Second, it would facilitate people in choosing that regime of which helps minimise their understanding of suffering, rather than imposing a particular regime of human rights over them.

Such a set-up would empower an individual to move between different value-systems of rights at the same pace at which he/she moves

¹⁶³ Eva Brems, *Enemies or Allies? Feminism and Cultural Relativism As Dissident Voices In Human Rights Discourse*, 19(1) HUMAN RIGHTS QUARTERLY 140 (February 1997).

¹⁶⁴ AMARTYA SEN, *THE IDEA OF JUSTICE*, 364-5 (Allen Lane, 2009).

¹⁶⁵ *Ibid.*, at pp. 228-230.

between his/her identities: Thereby, for instance, a female from the tribal community would be able to choose the civil and political version of human rights when she suffers in the paradigm of her identity as a woman, and the version of human rights incorporating non-Statist tribal values, when she suffers in the paradigm of her identity as a tribal. Either way, no version of human rights is imposed on her, or taken away from her.

C. Capability Approach And Its Utility

It is thus seen that freedom to choose between human rights models that cater to separate identities of an individual is a very important aspect, which needs to be kept in perspective, if the Naxal-tribal issue is to be resolved.

In this regard, the ‘capability approach’¹⁶⁶ promises to be a useful tool by focusing upon the maximisation of freedom for an individual. This approach involves “concentration on freedoms to achieve in general and the capabilities to function in particular.”¹⁶⁷ Under the capability approach, the functioning which a person has achieved in life, are not considered to be the ultimate normative measure.¹⁶⁸ This means that the focus under capability approach is not just on what an individual is actually doing, or a choice which he is in fact making, but also on what he has the capability to do, and what choices he is empowered to make.¹⁶⁹ It is closely related to the idea of opportunity, but this should not be understood in the limited traditional sense, but more as a positive notion of overall freedom.¹⁷⁰

¹⁶⁶ Martha Nussbaum, *Human Functioning and Social Justice*, in POLITICAL THEORY 20 (1992).

¹⁶⁷ AMARTYA SEN AND JEAN DRÈZE, INDIA: ECONOMIC DEVELOPMENT AND SOCIAL OPPORTUNITY, 11 (Clarendon Press, 1995).

¹⁶⁸ SABINA ALKIRE, VALUING FREEDOMS: SEN’S CAPABILITY APPROACH AND POVERTY REDUCTION 6 (Oxford University Press, 2005).

¹⁶⁹ David A. Clark, *The Capability Approach: Its Development, Critiques and Recent Advancements*, 5-6, ECONOMIC AND SOCIAL RESEARCH COUNCIL, GPRG-WPS-032, available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-032.pdf> (Last visited on April 16, 2011).

¹⁷⁰ AMARTYA SEN, INEQUALITY RE-EXAMINED 25 (Clarendon Press, Oxford, 1992).

In the Indian scenario concerning the tribal and Naxal conflict with the Government, such an approach is of special interest. As already seen, the root cause of the conflict is the lack of freedom to choose between different understandings of human rights under the present legal system. The application of capability approach here in, would look to maximizing this freedom: by increasing the number of human rights values-based versions and by affording the freedom to choose from any of these versions to protect an individual in a particular context or time.

This approach focuses on information on individual advantages, judged in terms of opportunity rather than a specific design of how a society should be organised,¹⁷¹ which would have entailed the imbue ment of a particular set of values. The capability approach leaves the same open-ended, thus, allowing for the application of tribal understandings. With the capability approach, an individual would, thus, be free to move between application of a Statist social and economic, or civil and political version of human rights, and a non-Statist tribal version.

D. Capability Approach Under The Indian Constitution: Certain Issues To Be Resolved

Capability approach is therefore, an important tool for the legal system to reconcile the Governmental, Naxal and tribal interests in the Indian scenario. Interestingly, under the Constitution, groundwork for the application of capability approach is already laid. This mainly includes provisions which allow for a community to govern itself to some extent. The Constitution provides for the separate governance of tribal areas¹⁷², and the law made by the State is inapplicable to certain areas deemed to be tribal areas, unless special legislation is provided for.¹⁷³ Schedule VI of the Constitution provides that autonomous democratically elected¹⁷⁴ District Councils in the tribal areas would govern these areas.¹⁷⁵ *Inter alia*, it confers upon

¹⁷¹ *Supra* note 164, at p. 232.

¹⁷² ¶2(4), Schedule VI, Constitution of India, 1950.

¹⁷³ *Ibid.*, ¶12AA.(a).

¹⁷⁴ *Ibid.*, ¶2.

¹⁷⁵ *Ibid.*, ¶3.

these Councils the power to regulate the allotment, occupation and use of land¹⁷⁶, the management of forests¹⁷⁷, inheritance of property¹⁷⁸, social customs¹⁷⁹, use of canals and any watercourse for agriculture¹⁸⁰, the assessment and collection of land revenue,¹⁸¹ grant of licenses or leases for the purpose of mineral extraction,¹⁸² and the regulation of control of money lending and trading by non-tribals.¹⁸³ Grant of such wide powers to tribal people for governance of their own community is indicative of a capability approach, whereby it gives these people the freedom to a great extent to choose the law applicable to them, by granting them control over the way their resources are to be utilised. It is a process whereby the subaltern vision is included in a liberal construction of rights, by “legitimising the illiberal practices of the tribes.”¹⁸⁴ It is interesting to note that Naxalism is not so much of a problem in most of the Schedule VI areas.¹⁸⁵ This can be attributed to the power of self-governance provided to a certain extent to the tribal communities in these areas.¹⁸⁶

However, such provisions are not enough to infuse the freedom needed to traverse between multiple understandings of human rights. As already discussed, the State might, while attempting to establish economic and social rights, claim to be representative of the community (as opposed to the individual), but it is important to remember that State and community are mutually exclusive concepts. While the latter is developed upon popular norms and consensus, the former is an imposition, which relies on coercion.¹⁸⁷ This very nature of the State makes it an instrument of

¹⁷⁶ *Ibid.*, ¶3 (a).

¹⁷⁷ *Ibid.*, ¶3(b).

¹⁷⁸ *Ibid.*, ¶3(h).

¹⁷⁹ *Ibid.*, ¶3(j).

¹⁸⁰ *Ibid.*, ¶3(c).

¹⁸¹ *Ibid.*, ¶8.

¹⁸² *Ibid.*, ¶9.

¹⁸³ *Ibid.*, ¶10.

¹⁸⁴ DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT*, 83-89 (University of California Press, 1985).

¹⁸⁵ *Supra* note 28.

¹⁸⁶ *Supra* note 175.

¹⁸⁷ *Supra* note 140.

representation of the dominant interest (in a community), as opposed to community interest because neither cultures nor realities can be constant.¹⁸⁸ This has many implications, the major one being that the State will always fail to represent community consensus, and hence community rights in the real sense cannot evolve under a State structure. As a result, even while a State might claim to represent community rights, it would actually be representing only the dominant interest. Parallel consequences will emerge where a communist-Naxal State, would only end up representing an occidental concept of the “working class”, rather than tribal interests.

Therefore, while the Constitutional setup might provide for special provisions for tribal governance under Schedule VI, it still limits the realisation of the vision of the tribals by virtue of functioning under a structure, which remains foreign to tribal imagination.¹⁸⁹ It is also worth noting that the applicability and proper enforcement of these provisions is still dependent on the will of the State. The following three points illustrate this.

First, the State has wide powers over the supposedly autonomous tribal administration. Thus State Legislatures can overrule the law pronounced by the District Councils in tribal regions. Schedule VI itself provides that if a law made by the District Council is repugnant to the law laid by the State Legislature, then the former would be void to the extent of repugnancy.¹⁹⁰ Further, legislations exist which have the potential to dilute the power of District Councils to an even larger extent, as is seen in the Land Acquisition Act, 1894, under which the government has power to take any land under possession for public purposes, “in case of urgency” and such land is deemed to be free of any encumbrances.¹⁹¹ Of course, “urgency” can be very widely defined and has been misused several times, especially post-1991, after the

¹⁸⁸ *Ibid.*

¹⁸⁹ Apoorv Kurup, *Tribal Law in India: How Decentralised Administration Is Extinguishing Tribal Rights and Why Autonomous Tribal Governments Are Better*, 7, *INDIGENOUS L.J.* 95 (2008-09).

¹⁹⁰ ¶12A.(a), Schedule VI, Constitution of India, 1950.

¹⁹¹ §17, Land Acquisition Act (1 of 1894).

implementation of the policy of liberalisation, privatisation and globalisation in the context of establishing Special Economic Zones (SEZs). Though for the people displaced under such law, usually tribal, the Draft National Rehabilitation Policy, 2006 purports to “protect their rights”¹⁹² and emphasises upon “the active participation of affected persons.”¹⁹³ The affected persons do not even have the right to be consulted prior to finalization of their lands as the project site.¹⁹⁴ Further, the Policy gives sweeping power to the Ministry of Defence to acquire land for purposes of national security, and the Ministry is exempt in such cases to go by the usual norm of conducting a Social Impact Assessment (SIA) and Environmental Impact Assessment (EIA).¹⁹⁵ In other words, the State rises above its accountability to the tribes. Therefore, if tomorrow a nuclear power plant is constructed for defense purposes, even in tribal areas, nobody can question the same. Not only this, the 2006 Policy further reinforces the significance of compulsory acquisition of land¹⁹⁶ under the Land Acquisition Act, 1894, upholding the concept of eminent domain- though the revised 2007 Policy lays down that land can be acquired in case of emergency under Land Acquisition Act or similar provision of any other Act of the Union or a State for the time being in force by keeping the affected families in “transit and temporary accommodation, pending rehabilitation and resettlement scheme or plan.”¹⁹⁷ Yet again they are widely worded, and misuse of the provisions seems imminent. Further, only the affected families that had possession of forest lands prior to 25th October, 1980 and have been displaced, are entitled to the benefits of the Policy, which is not in consonance with the Scheduled Tribes and Other Forest Dwellers Act¹⁹⁸, which lays down that the cut-off date for ownership

¹⁹² Preamble, The Draft National Rehabilitation Policy of 2006.

¹⁹³ *Ibid.*

¹⁹⁴ *Supra* note 192, Clause 6.1.

¹⁹⁵ *Supra* note 192, Clause 4.6.

¹⁹⁶ *Supra* note 192, Clause 6.23.

¹⁹⁷ Clause 7.18, The Draft National Rehabilitation Policy of 2007.

¹⁹⁸ Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act (2 of 2007).

of land rights is 13th December, 2005.¹⁹⁹ Further, the Policy does not guarantee land to displaced people, not even to the Scheduled Tribes,²⁰⁰ laying down that land “may be allotted”, “if government land is available,”²⁰¹ - such phrases indicate that wide discretionary powers have been vested in the Government. The compensation in the case is also meager, with each affected family getting a maximum of Rs. 20,000 in compensation per hectare of land.²⁰² Moreover, although the Policy provides that Gram Sabha(s) concerned should be consulted in all cases of acquisition in the Fifth Schedule Areas including acquisition under the emergency clause of Land Acquisition Act, 1984, the Policy fails to provide such safeguards in cases of land acquisition in the Sixth Scheduled Areas. Moreover, overall the Draft National Rehabilitation Policy of 2007 has upheld most of these provisions.

Second, the law-making bodies in Tribal Areas themselves function under District Councils²⁰³ which are ultimately established by the State, which is indicative of the fact that such a set-up is not independent of the administration. The method of constitution of the District Councils is regulated by the State.²⁰⁴ Further, regulations made by the District Council have to be submitted to the Governor, and would have no effect unless the Governor approves the same.²⁰⁵

Lastly, the State has power to annul and suspend the acts and resolutions of District Councils, when the same is “likely to endanger the safety of India, or be prejudicial to public order,”²⁰⁶ and also dissolve District Councils.²⁰⁷ Therefore, the general tenor of the Policy seems to suggest that when its own authority is even slightly threatened, the State

¹⁹⁹ *Supra* note 192, Clause 6.4 (iv).

²⁰⁰ *Supra* note 192, Clause 7.18.3.

²⁰¹ *Supra* note 192, Clause 7.4.

²⁰² *Supra* note 192, Clause 7.7.

²⁰³ ¶2, Schedule VI, Constitution of India, 1950

²⁰⁴ *Ibid.*, ¶2(6).

²⁰⁵ *Ibid.*, ¶10(3), ¶8(4), ¶9(2), ¶3(3).

²⁰⁶ *Ibid.*, ¶15(1).

²⁰⁷ *Ibid.*, ¶16.

finds ways to justify any of its acts - marking its superiority, and making Schedule VI look like an act of magnanimity to be revoked when convenient, under the apt guise of such actions being in the greater 'national interest'. However, the vice-versa is not true, i.e., threat to tribal autonomy, which is an essential part of their culture and understanding of rights, does not evoke the same legitimacy for their actions.

These are some of the issues, which still need to be resolved for the functionality of the capability approach in our legal system - the only way to do this being the dilution of the Statist values, therein; in other words, decentralisation of the State mechanism. Like Mohandas Gandhi put it, "Parliaments are merely emblems of slavery."²⁰⁸ However, as observed, the centralised State seems to be constantly gaining foothold, in the name of progress. It is important to remember, that this progress, does come at a cost viz. the suppression of understandings of cultural groups of what it means to have rights, and to be human.

V. CONCLUSION

The author has, in her limited capacity, tried to establish the differences between Naxal, governmental and tribal visions on human rights, and why the present conflict between these largely exists, locating this conflict within the ambit of the issue of cultural relativism. Moreover, the author has attempted to give a preview of how this cultural relativism and rights universalization debate might be solved by the use of the capability approach. Although how this approach can be effectively brought into application still remains to be fully explored, especially with regard to the elite and subaltern understandings of human rights, where the latter is deprived of the vision of a State. In a world dominated by nation-States, the operation seems all the more difficult, if not impossible, without at least a major systemic change. However, the fact of the matter is that there are cultural conflicts in the understanding of rights between Naxals, the State and the tribals, and unless these are resolved, war and violence, are likely to continue, and will possibly result in extermination of the non-dominant, subordinate tribal vision.

²⁰⁸ MOHANDAS K. GANDHI, *HIND SWARAJ AND OTHER WRITINGS*, 38 (ed. Anthony Parel, Cambridge University Press, 1997).