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# Re-Conceptualizing the Rights of Indigenous People Displaced through Uranium Mining An Analysis of State Chhattisgarh

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## ABSTRACT

*The Pre-Feasibility Report for Jajawal Uranium Mining Project proposed to be located in the district of Surjapur in State Chhattisgarh was released by the Uranium Corporation of India Ltd. in 2018. The Report presents a controversial assessment of the land, as it furnishes that India is a Uranium Deposit of only about 0.8% of the world's uranium deposits. This raises a question, as to whether drilling and mining operations, in a protected Schedule V area of the Constitution, could meet the energy demands of India. Another facet of the argument, lies in the enjoyment of Rights by the "indigenous people of Chhattisgarh". The Census 2011, documents that Surjapur is home to 55.11% of tribal of the total population. There is still a doubt about the efficacy of the project, as the report documents that the life of the Mine would only be twenty years; which will strategically eliminate the agricultural and tribal land, water resources, making it susceptible to pollution and non-usage.*

*Jharkhand and Chhattisgarh, share a parallel resemblance; sharing a dominant tribal population and being an area protected under Schedule V of the Constitution. After various reports surfacing over the Jaduguda Mine's controversy on the sustainability of the mine and unnatural release of radioactive and toxic waste ; there is genuine threat to the ecology, people, livestock, rivers, forests and agricultural produce in an area surrounded by Uranium Mines in Jharkhand. This problem will resemble in Chhattisgarh, as well, if a uranium mine is installed.*

*Various Claims, Committee Reports and Judgements of the Hon'ble Supreme Court and High Court, propose a procedure for a sound takeover of a tribal land; but "language as a resource" acts as a deterrence for the tribal as they are unable to understand the gravity of situation and are defenceless in protecting their own heritage owing to language difference. They are further marginalised by Government claims over the chant of 'Development' and 'Job Security'. In the light of the above proposition, it is necessary to reevaluate the rights of the tribal, in a Schedule V area and argue about the efficacy of the*

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*Panchayats (Extension to Scheduled Areas) Act, 1996, Schedule Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This paper is an attempt to address the two pivotal rights of an indigenous community; The Right to Indigenous Land and The Right to Health. Although, the rights are not absolute in nature, it will discuss the juxtaposition in the light of Chhattisgarh, being a Schedule V area. It will further accentuate on how a balance between 'Development' and 'Rights of the Indigenous People' can be vetted and transformed in the face of "holistic development".*

**Keywords:** Uranium Mining, Rights of the Indigenous People, Schedule V of the Constitution of India, Chhattisgarh

## I. INTRODUCTION

The preamble of the Atomic Energy Act<sup>3</sup>, provides for development, control and use of atomic energy in India. For the purpose of creating energy for the welfare of the people and other peaceful purpose, the Atomic Energy Act was also designated to locate minerals for atomic energy, such as uranium<sup>4</sup>. After independence, uranium deposits were found in Jaduguda in the Singhbhum district of Jharkhand in 1951<sup>5</sup>. Subsequently, in 1956, uranium reserves were discovered at Umra in the Udaipur district of Rajasthan, and in 1973, at Bodal in the Rajnandagaon district of Chhattisgarh. In 1984, sandstone-type uranium deposits were discovered at "Domiasiat in the West Khasi Hills district in Meghalaya"<sup>6</sup>. In 1991, uranium deposits were found at Lambapur in the Nalgonda district in Andhra Pradesh, and in 1997, at Gogi in the Gulbarga district of Karnataka. In all the aforementioned states more uranium mines was discovered later<sup>7</sup> which brought in a contentious argument over the efficacy of such project.

It is reasonable to question whether Uranium Mining would cause any disruption to the wildlife, environment and the lands of the indigenous tribal minorities in Chhattisgarh. The proposed mining project in Surguja district of Chhattisgarh, home to 44.21% of protected forests; would be completely displaced and might not be correctly rehabilitated by the

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<sup>3</sup> The Atomic Energy Act, 1962 Act NO. 33 OF 1962

<sup>4</sup> RAJIV NAYAN, GOVERNING URANIUM IN INDIA (2015), <http://en.diis.dk/en/node/4715> (last visited May 18, 2020).

<sup>5</sup> Ibid

<sup>6</sup> North Eastern Region : Atomic Minerals Directorate, , <https://www.amd.gov.in/app16/content.aspx?link=35> (last visited May 31, 2020).

<sup>7</sup> Id

Government. The forest cover in Chhattisgarh constitutes 41.18% of the State's geographical land<sup>8</sup>. The state has three National parks and eleven Wildlife Sanctuaries which covers an area of 0.29 million hectare and 0.36 million hectare respectively. The proposed mining project in Surguja district entails that the mining lease area which measures 450 hectares is proposed to be set up in village Jajawal and Anjani which consists of such protected forest. Although the project has not been implemented yet, there is a disturbance in the air about the efficacy of the uranium mineral project in Chhattisgarh, considering that the project will only create energy to the tune of 0.135 million TPA<sup>9</sup>.

Much of the debate around uranium mining, stems from its uncertainty<sup>10</sup>. Although, uranium usage would be an attractive avenue to switch for energy reserves<sup>11</sup>, the problem lies because of the safety issues. Any progress comes with a price. The recent controversy around the uranium mine in Jharkhand, where a research undertaken assesses 9000 people in five villages of Jharkhand, found cases of "congenital deformities, sterility, spontaneous abortions and cancer were alarmingly high among the villagers, mostly from the Ho, Santhal, Munda and Mahali tribes"<sup>12</sup>. The safety and security issue in the mine is highly susceptible to pollution, causing radioactive poisoning<sup>13</sup>. Miners are exposed to the dust, directly and indirectly where they inhale radon gas. The transportation of the ore, also creates problems for the villagers, as the ore is transported in uncovered trucks, which fall on the sides of the road.<sup>14</sup> The contaminated water bodies, are used for drinking and fishing<sup>15</sup>, which again aggravates the contamination level in the village. Similarly, protest is also taking place in Telangana, over the razing of Nallamma Forest<sup>16</sup> and the possible contamination of River Krishna and razing of Amrabad Tiger Reserve in Telangana<sup>17</sup>. These all violations and even more would displace the indigenous people from their natural habitat, causing a grave violation to their culture, language

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<sup>8</sup> Indian State of Forest Report, Forests and Tree Resources in States and Union Territories, , [http://fsi.nic.in/cover\\_2011/chattisgarh.pdf](http://fsi.nic.in/cover_2011/chattisgarh.pdf) (last visited May 15, 2020).

<sup>9</sup> Supra note 1.

<sup>10</sup> Debate on Uranium as a Sustainable Energy Source, , <http://large.stanford.edu/courses/2016/ph240/hilliard-arce2/> (last visited May 17, 2020).

<sup>11</sup> Id

<sup>12</sup> Uranium mine waste imperils villages in Jaduguda, , <https://www.downtoearth.org.in/news/uranium-mine-waste-imperils-villages-in-jaduguda-4306> (last visited May 27, 2020).

<sup>13</sup> Uranium Mining in Jharkhand: Radioactive Poisoning Ravaging Lives in Villages | NewsClick, , <https://www.newsclick.in/uranium-mining-jharkhand-radioactive-poisoning-ravaging-lives-villages> (last visited May 27, 2020).

<sup>14</sup> Ibid

<sup>15</sup> Id

<sup>16</sup> Telangana won't permit uranium mining in Nallamala forest, KTR tells Legislative Council, , THE NEWS MINUTE (2019), <https://www.thenewsminute.com/article/telangana-won-t-permit-uranium-mining-nallamala-forest-ktr-tells-legislative-council-108938> (last visited May 28, 2020).

<sup>17</sup> No Uranium mining in Amrabad Tiger Reserve forest: Telangana CM - The Hindu, , <https://www.thehindu.com/news/national/telangana/no-uranium-mining-in-amrabad-tiger-reserve-forest-telangana-cm/article29423784.ece> (last visited May 28, 2020).

and diversity. Although the avenue of development is very enthralling and important, but there is a need to balance the interests of the indigenous community and mining operations, especially in a Schedule V area.

## **II. MANIFESTATION OF TRIBAL RIGHTS UNDER THE INDIAN CONSTITUTION.**

The Census 2011 projects that there is 32% decline in the number of villages with 100% tribal population between 2001 and 2011<sup>18</sup>. The movement of tribals has been increasingly marginalised because of economic development. The Schedule Tribes in India, forms almost 9% of the entire population, according to the Census 2011. India is also home to, largest indigenous population in any country in the world, occupying 22% of India's geographical terrain<sup>19</sup>. Considering the vulnerability of the tribal in India, the Constitution makers were conscious in providing for special provisions for the Tribal Minority in the country.

Articles 244(1) and 244(2) of the Constitution carve out tribal majority areas from the geographical land mass of India, that are designated as Scheduled areas in the Fifth and Sixth Schedules of the Constitution respectively. Here the Scheduled Tribes are unique because unlike the rest of the population and unlike even the Scheduled Castes who have group based representation and affirmative action provisions, the Scheduled Tribes are the only minority group that have specially recognised rights to land.

The Fifth Schedule provides for the administration of tribal majority areas in ten states within peninsular India that have tribal minority populations, that is the population of STs is in a minority, compared to the population of the remainder of the state. The currently designated Fifth Scheduled Areas are in the states of Andhra Pradesh, Telangana, Gujarat, Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, and Rajasthan.

Under Article 19(5), special protection can be imposed by the State from making any law for the protection of the Schedule Tribe.

In a country that is rapidly developing and is currently the world's fastest growing economy, we find that the Scheduled Tribes have historically remained some of the most vulnerable and impoverished groups in India, who, based on statistical data, have disproportionately borne the burden of economic development. Poverty and landlessness is rampant amongst the STs. More

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<sup>18</sup> More than 50% of India's tribal population has moved out of traditional habitats, , <https://www.downtoearth.org.in/news/health/more-than-50-of-india-s-tribal-population-has-moved-out-of-traditional-habitats-62208> (last visited May 7, 2020).

<sup>19</sup> A huge land grab is threatening India's tribal people. They need global help | Mari Marcel Thekaekara | Opinion | The Guardian, , <https://www.theguardian.com/commentisfree/2019/feb/25/land-grab-tribal-people-india-ativasi> (last visited May 15, 2020).

than half (51%) of all STs are below the poverty line, and 65% of the STs are landless as per the 2011 Census<sup>20</sup>. The displacement of the indigenous people, has also taken when there is mining operations of coal in Chhattisgarh. Over 400 Adivasi families were displaced because of mining operations in South Eastern Coalfields Limited (SECL)<sup>21</sup>. A report by Amnesty International, points out that, “One in six of the 87,000 Indians who have been displaced over the past 40 years is Adivasi”<sup>22</sup>.

Despite constitutional framework, for the protection of the tribal land and tribal community, as well as special affirmative action provisions for the STs, the question arises as to why the community is more vulnerable and pregnable to attack by the chants of ‘development and ‘job security’.

### III. THE CONTENTIOUS ‘LAND’ AS A RIGHT FOR THE TRIBAL.

The Mines and Minerals Act<sup>23</sup> is an indigenous act for the development and regulation of mines and minerals<sup>24</sup>. Under Section 4 of the Act, there is a general restriction which provides that the prospecting mining operations under the Act will not be covered in case it is undertaken by the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, among others. This bars the exploration and excavation activity of uranium, which is a mine used in creation of nuclear energy. In the case of State of M.P. vs Narmada Bacho Andolan<sup>25</sup>, the three judge bench of the Supreme Court observed that in the progress of development, the State cannot be permitted to displace tribal people which suffers from poverty and ignorance and without taking appropriate remedial measures of rehabilitation. But under Section 2 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013<sup>26</sup>, provides that the application of the Act can also be used for infrastructural projects, including mining. But that such a provision can take place, only when there is consent obtained along with a report of Social Impact Assessment. The Section also tends to protect the Schedule Areas, providing for the provision that, “no land shall be transferred by way of acquisition, in the Scheduled Areas in

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<sup>20</sup> Editors : Raj Kapila & Uma Kapila, Economic Developments In India : Monthly Update, Volume -36 Analysis, Reports, Policy Documents With Cd-Rom (2000).

<sup>21</sup> The mine that displaced India’s indigenous people || Al Jazeera, , <https://www.aljazeera.com/blogs/asia/2016/07/displaced-india-indigenous-people-160707062855721.html> (last visited May 25, 2020).

<sup>22</sup> India’s coal mining ambition hurts indigenous group, Amnesty says - Reuters, , <https://in.reuters.com/article/india-coal-displacement-tribals-mining/indias-coal-mining-ambition-hurts-indigenous-group-amnesty-says-idINKCN0ZT0YP> (last visited May 28, 2020).

<sup>23</sup> Mines and Minerals (Development and Regulation) Act, 1957; Act No. 67 of 1957 (amended 11<sup>th</sup> July, 2016)

<sup>24</sup> Preamble of Mines and Minerals (Development and Regulation) Act, 1957.

<sup>25</sup> State of M.P. vs. Narmada Bachao Andolan, (2011) 7SCC 639

<sup>26</sup> Act no 30 of 2013.

*contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas*<sup>27</sup>. There is a letter surfacing from the Uranium Corporation of India Ltd, which has adopted the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for the purpose of providing compensation and resettlement but the same is applicable only for upcoming projects in Jharkhand Region<sup>28</sup>. The Act was replaced and substituted by “Rehabilitation and Resettlement Policy of 2006” of Jharkhand, yet the language of the letter suggests that the same will be used only in the State of Jharkhand and not others. Additionally, it is noted that in cases of acquisition of land for the purpose of uranium mining and for the sake of ‘public use’, the indigenous act are not implemented fairly as the concept of “Eminent Domain” overrides the provisions of the Acts.

Eminent domain, is an inherent power of the State or the Central Government, by virtue of its sovereignty and is intimately connected with political and economic necessity<sup>29</sup>. When a property has to be undertaken, there has to constitute a public purpose, to justify taking that private property. English as well as Indian courts, have refrained in explaining the concept of what would constitute, “public use”. The Constitution of the US provides that private property shall not be taken “for public purpose without just compensation”. Similar preface is used in Indian Territory as well. Public Purpose was even not defined in the colonial, Land Acquisition Act, 1894. The amendment of the Act explained the concept of ‘Public Purpose’, for residential purposes and developments carried out by local authorities and private companies which increased the extent of acquisition of private land and diversion of forest<sup>30</sup>. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was the first statute to legally mandate comprehensive Resettlement and Rehabilitation of Project-Affected Persons; but the definition of ‘public purpose’ remains too wide and will not help in minimizing displacement. The Act also includes the idea of acquisition for private companies even from Scheduled Areas which expands the power of acquisition and alienation beyond what it was under the 1894 Act<sup>31</sup>.

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<sup>27</sup> Proviso 2 of Section 2(2)

<sup>28</sup> Adoption of RFCTLARR Act, 2013 by UCIL.pdf, , <http://www.ucil.gov.in/notes/Adoption%20of%20RFCTLARR%20Act,%202013%20by%20UCIL.pdf> (last visited May 26, 2020).

<sup>29</sup> “Public Use in Eminent Domain.” *Columbia Law Review*, vol. 6, no. 1, 1906, pp. 46–47. JSTOR, [www.jstor.org/stable/1109056](http://www.jstor.org/stable/1109056).

<sup>30</sup> Tribal Committee Report, May-June 2014.pdf, , <http://www.indiaenvironmentportal.org.in/files/file/Tribal%20Committee%20Report,%20May-June%202014.pdf> (last visited May 20, 2020).

<sup>31</sup> Id.

The concept of acquisition of land, in a Schedule V tribal area comes with an inherent use of abuse of power by the Government authorities. Although the indigenous community is displaced to another area, there is no fair compensation allocated to them and sometimes the minority Schedule Tribe are forced to accept a lesser amount for their land. There is a rendition and violation of their right to language as well, as the tribal minority do not understand the language of the 'concerned department officials', who would try to explain to them about the 'development', 'exploration', 'compensation' to be taken place in their area.

The land acquisition process, is often unfair in Schedule V areas. Jharkhand shares a testimony of the same, where an illegitimate environmental clearance was taken for the purpose of coal mining<sup>32</sup>. The venue for public hearing, was set up 40 km from the affected site; villagers whose land were in question were denied entry to the hearing and there was public stifle, where lathi charge was used by the private parties. This showcases how the Government has shed off its responsibility in consciously protecting the rights of the indigenous minority.

Under the provisions of The Provisions of the Panchayats (Extension to the Scheduled Areas) Act<sup>33</sup>, which empowers the Gram Sabha or Panchayat to deal with the issue and consultations in land acquisition and mandatory recommendations by Gram Sabha or Panchayat for prospective licenses/lease for mines and concession for the exploitation of minor minerals; the provisions are overridden by the concept of Eminent Domain and the Atomic Energy Act, 1962<sup>34</sup>. This causes a resurgence and a need for evaluation of the Forest Rights and other rights of the tribal community.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>35</sup>; also called as the Forest Rights Act; provides for in its Preamble, about the protection of the Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem; who are heavily in-criminalised by the injustice of others, and hence accords them special protection. Under Section 3 of the Act, the rights provided to the forest dwellers are community rights and individual rights, with an additional duty under Section 5, provides for the protection of wildlife, forest and biodiversity; preservation from destruction among others.

Section 3(2) of the Act, provides for an exception in the creation of non-conventional source

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<sup>32</sup> Land Acquisition by Coal Companies in Jharkhand, *Economic and Political Weekly*, [http://www.indiaenvironmentportal.org.in/files/file/Koodankulam\\_2.pdf](http://www.indiaenvironmentportal.org.in/files/file/Koodankulam_2.pdf) (last visited May 28, 2020).

<sup>33</sup> PESA Rules & Guidelines - THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, , [https://pesadarpan.gov.in/en\\_US/rules](https://pesadarpan.gov.in/en_US/rules) (last visited May 31, 2020).

<sup>34</sup> Land and Governance Under the Fifth Schedule, *An Overview of the Law*, <https://tribal.nic.in/FRA/data/LandandGovernanceunderFifthSchedule.pdf> (last visited May 28, 2020).

<sup>35</sup> Act no 2 of 2007.

of energy, for which only 75 trees per hectare can be cut. Coming on the question of feasibility of the uranium mining in Surguja, which is home to a dense forest area cover, the rights of the indigenous and forest community will be heavily compromised, as they will be displaced from their natural surroundings.

Additionally, in the meeting of the Expert Appraisal Committee for Environmental Appraisal of Mining Projects of the Ministry of Environment and Forests, where various proposals for renewal of mine lease was undertaken; the proposal for renewal of mine lease for Jaduguda Mine was not done<sup>36</sup>. As a result of which, the increased problem which are faced by the people, are not considered or evaluation by the ministry, thereby questioning the validity of the project at Jharkhand. Even the mine was closed in 2014, after the order of the Central Government to “clamp down on mines operating under second or third deemed renewals<sup>37</sup>”. Although the mine remains operative now, it is yet to create a balance between development and indigenous rights of the people. For the same, an affirmative action is required by the Ministry as well the Governments in handling the issue in hand.

#### **IV. IMPACT OF URANIUM MINING AND MILL TAILINGS ON HEALTH**

The Uranium mines in Jaduguda, also called as river of gold; has security concerns regarding the health impact from mining uranium. There have been several studies, undertaken not only in India but other parts of the world regarding the efficacy of uranium mining and the impact it has on the people. Such an impact is visible not only through mining operations but also through mill tailings. Tailings are common by-product of uranium mining process. If they are left on the ground, the radioactive sand can be carried great distances by the wind, entering the food chain and bodies of water<sup>38</sup>.

India's nuclear dream is borne by people who are engaged in the mining process and also the neighbouring area. During the mining process, the slurry is kept untreated and is not disposed by the proper mechanism, which contains heaps of radioactive material. To save the cost of using machines to dispose the waste, the UCIL has resorted to clear the slurry manually because of shortage of water<sup>39</sup>. The 64 acre tailing pond, near Jaduguda Mine was used as a mechanism

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<sup>36</sup> Summary Record Of the 25th Meeting of Expert Appraisal Committee for Environmental Appraisal of Mining Projects Constituted under EIA Notification, 2006, Ministry of Environment & Forests (IA Division), <http://environmentclearance.nic.in/viewminutes.aspx?date1=03/19/2012&code=MIN> (last visited May 27, 2020).

<sup>37</sup> UCIL's Jaduguda mine closure to impact nuclear power output, , <https://www.livemint.com/Industry/IZevs7Q9F0obBaVCY91tdJ/UCILs-Jaduguda-mine-closure-to-impact-nuclear-power-output.html> (last visited May 26, 2020).

<sup>38</sup> Uranium Tailing: Your Environment, Your Health | National Library of Medicine, , TOX TOWN , <https://toxtown.nlm.nih.gov/sources-of-exposure/uranium-tailings> (last visited May 25, 2020).

<sup>39</sup> Accident kills three workers in uranium mine: India's nuclear dream, adivasis' nightmare | Wise International,

to dump the slurry not only from Jharkhand but also from Telangana. The practice of the UCIL in employing the labourers is also dubious. Workers are appointed contractually and sub-contractually, to save the costs<sup>40</sup>. If a worker, is exposed to uranium radiation, he is expelled, without accounting for any compensation. Many tribal population which were promised jobs, on the pretext of development, were employed as temporary labourers<sup>41</sup> or not given a job at all.

The government in 2018 declared that nuclear power is safe, environmentally benign and economically viable to meet the power needs of the country but there have been several studies which showcases the negative impact of radiation on the health of the people. A health survey conducted by Dr. Surendra Gadekar's team around the area of Jadugoda mines shows the harmful consequences of radiation ranging from skin diseases to infertility and cancer<sup>42</sup>. An independent research undertaken by Professor Dipak Ghosh from Jadhavpur University presents that if the adulterated water from River Subarnarekha is ingested, it would cause 100 times more damage than other types of radiation<sup>43</sup>. A research by Indian Doctors for Peace and Development (IDPD), presents that there is a significant rise in cases of “congestial deformities among children, increased sterility and elevated numbers of deaths due to cancer”<sup>44</sup>. Sadly, the Government authorities have vehemently ignored these claims. A research team from BARC was set up to review the cases of radiation in the district; but the report outrightly rejects the claims of the petitioners and presented a unanonyms view that “*diseases due to genetic abnormalities like thalasimia major and Retentions pogmenlosa, moderate to gross spleenomegaly due to chronic malarial infection, (as this is hyper endemic area) malnutrition, Post encephalitic, post head injury squeal and certain habits (alcohol) and have no relation to radiation*”<sup>45</sup>.” This case was further interrogated by the High Court of Jharkhand, *suo moto*.

In the case of *Court on Its Own Motion vs Union of India and Ors*<sup>46</sup>, the HC was of the view that because of conflicting opinions submitted before the Court, it ordered a fresh investigation from an independent research organisation. The interrogation has yet not been undertaken by

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, <https://www.wiseinternational.org/nuclear-monitor/825/accident-kills-three-workers-uranium-mine-indias-nuclear-dream-adivasis> (last visited May 29, 2020).

<sup>40</sup> Ibid

<sup>41</sup> Id

<sup>42</sup> Id

<sup>43</sup> How India’s Nuclear Industry Created A River Of Death, According to Court Case Claims | HuffPost, , [https://www.huffpost.com/entry/india-uranium-mine-jadugoda\\_n\\_566b2d2ce4b0fccee16e8dcd](https://www.huffpost.com/entry/india-uranium-mine-jadugoda_n_566b2d2ce4b0fccee16e8dcd) (last visited May 30, 2020).

<sup>44</sup> Jadugoda: The Nuclear Graveyard, , HINDUSTANTIMES.COM , Jadugoda: The Nuclear Graveyard .html (last visited May 28, 2020).

<sup>45</sup> Medical Survey of Inhabitants Residing within 2 Km Radius of UCIL’S Tailings Storage Pond, <http://www.ucil.gov.in/pdf/vigilance/Legislative%20Assy.pdf> (last visited May 22, 2020).

<sup>46</sup> W.P.(PIL) No. 1188 of 2014

any organisation, besmirching the right of health of the tribal community.

The protection of premise of health is guaranteed by the Supreme Court of India under Article 21<sup>47</sup> and other ancillary provisions of the United Nations Covenants and Documents. The inaction of the Government authorities in dealing and disposing the iron tailings is in contravention to various enactments mentioned in Schedule I of the NGT Act, 2010 including the Water (Prevention and Control Pollution) Act, and the Environment (Protection) Act, 1986. The 7 judge bench of the SC, in the case of *M.C. Mehta vs Union of India (Oleum Gas Leak case)*<sup>48</sup>, argued over the efficacy of the tortious liability of an enterprise which is engaged in hazardous or inherently dangerous industry. The Hon'ble Court devised the concept of 'Absolute Liability', where such an organisation owes "an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken". Such an enterprise should be made absolutely liable in compensating for any harm which any party may have been affected from. It is submitted, that in cases of Uranium mining where there is genuine disposition to the health of not only the workers but also those who exposed to the constant radiation from the neighbouring area, the principle of "Absolute Liability" should be extended and the Government should be held accountable for loss of health and of lives.

In addition, the Right to health is protected by the ambitious United Nations Covenants. Moreover, the Sustainable Development Goals of the United Nations, calls all of its member countries to end the constant suffering and deprivation of good health<sup>49</sup>. A Sub-goal of India is to "substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination" by 2030<sup>50</sup>. This can only be done by intensive state and central measures to recognise the problem of contamination and radiation and create sustainable measures to substantially reduce radiation in all forms.

The right to health has to be understood as the right to the highest attainable standard of physical and mental health, rather than as an unconditional right to be healthy<sup>51</sup>. The right to health refers to "the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for its realization"<sup>52</sup>. The SC of India in the case of *Chameli Singh v. State*

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<sup>47</sup> Organisational Health and Safety Association vs Union of India AIR 2014 SC 1469.

<sup>48</sup> 1987 SCR (1) 819, AIR 1987 965

<sup>49</sup> SDG 3: Good Health and Well-being, , UN INDIA , <https://in.one.un.org/page/sustainable-development-goals/sdg-3-2/> (last visited May 5, 2020).

<sup>50</sup> Id.

<sup>51</sup> Aart Hendriks, *The Right to Health in National and International Jurisprudence*, 5 EUR. J. HEALTH L. 389 (1998).

<sup>52</sup> Id.

of Uttar Pradesh<sup>53</sup>, recognised the importance of Right to life in the following words, “*Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.*” One important jurisprudence of the Court comes in the case of *K. Mani v. Secretary to Government, Health and Family Welfare Department, Chennai, and others*,<sup>54</sup> where it recognised that right to health of a worker is an integral part of Right to life and equally important and purposeful with regard to dignity of a person. The Court held that the right to health and medical care is a Fundamental Right under Art. 21 read with Arts. 39(c), 41 and 43 of the Constitution and make the life of the workman meaningful and purposeful with dignity of person.

In the district of Rajnandgaon, Chhattisgarh, a question on the revival of uranium mining was answered by Shri V. Narayanasamy. He mentioned that only limited exploratory mining took place in Bodal mines to assess it for economic feasibility<sup>55</sup>. The work was started in February 1976 and was closed in May 1989. The Government also, does not seek to revive the said mine in future. Although there were no intensive operations taken over by the UCIL, the exploration of the mine has caused severe health problems owing to arsenic contamination in the groundwater. Around 22 villages have been severely affected by arsenic contamination in Ambagad Chowki block, Kaudikasa village in Rajnandgaon district<sup>56</sup>. Various research was also undertaken to assess the cause of increased drowsiness, headaches, diarrhoea, muscle cramping, and skin lesions. Sample assessment of 146 sites, tubewells and wells in 22 villages were analysed by organisations like, International Groundwater Arsenic Research Group, Royal Institute of Technology, Stockholm, National Institute of Technology, Rourkela and Raipur, and Palacky University, Czech Republic<sup>57</sup>. All the research concluded that “uranium mining in the area could be a factor for the increase in arsenic contamination in the groundwater”<sup>58</sup>. As per WHO guidelines, “the maximum permissible level of arsenic in water is about 10 µg per litre”. In Kaudikasa, the arsenic concentration in tube well water had reached “520 µg per litre (measuring unit), whereas in dug wells (general depth less than 50 m) the

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<sup>53</sup> (1996) 2 SCC 549 : A.I.R. 1996 S.C. 1051

<sup>54</sup> 2007 SCC OnLine Mad 203 : (2007) 3 LLN 473 : (2007) 3 Mad LJ 34

<sup>55</sup> Government of India, Department of Atomic Energy, Lok Sabha, Unstarred Question No.3072, Revival of Uranium Mine (2012),

<sup>56</sup> How this Arsenic-affected village got clean water after two decades, , <https://yourstory.com/2018/03/arsenic-affected-village-water> (last visited May 25, 2020).

<sup>57</sup> Ibid.

<sup>58</sup> Id.

arsenic concentration was as high as 880 µg per litre”<sup>59</sup>.

## V. REHABILITATION OF THE TRIBAL

The shift in tribal economy and diversification of occupations has been corroborated in the People of India report by the Anthropological Survey of India. The report maintains that “... *the number of communities practicing hunting and gathering has declined by 24.08 percent, as forests have disappeared and wildlife has diminished. Ecological degradation has severely curtailed the related traditional occupations. For instance, trapping of birds and animals has declined by 36.84 percent, pastoral activities by 12.5 percent, and shifting cultivation by 18.14 percent. However, there is a rise in horticulture (34.4 percent), terrace cultivation (36.84 percent), settled cultivation (29.58 percent), animal husbandry (22.5 percent), sericulture (82.6 percent), and bee-keeping (60 percent). Many of the traditional crafts have disappeared and spinning, in particular, has suffered (25.58 percent). Related activities such as weaving (3.32 percent), dyeing (33.34 percent) and printing (100 percent) have similarly suffered. Skin and hide work as also stone carving has declined.*”

The Amnesty International, projects that the tribal suffer the most and are displaced because of economic development<sup>60</sup>. For coal projects, “One in six of the 87,000 Indians who have been displaced over the past 40 years by state-owned Coal India Ltd (CIL) is Adivasi”<sup>61</sup>. Displacement and poor rehabilitation of the tribal is not a new phenomenon, but has been evident in many ongoing developmental projects of the country. Because of insufficient data, on the number of displaced people through uranium mining, we are of the opinion that such displacement of the tribal and poor rehabilitation of them has taken place in these projects as well. Even when there is no forced displacement of the people by the Government, there have been situations where the tribal are forced to displace themselves, owing to blasting and water contamination<sup>62</sup>.

There have been various measures for the protection and proper rehabilitation of the tribal by creation of special Statues. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, in section 4 (5) states that save as otherwise provided, no member of a forest dwelling Scheduled Tribes or Other Traditional Forest Dweller shall be

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<sup>59</sup> Id.

<sup>60</sup> India’s coal mining ambition hurts indigenous group, Amnesty says - Reuters, , <https://in.reuters.com/article/india-coal-displacement-tribals-mining/indias-coal-mining-ambition-hurts-indigenous-group-amnesty-says-idINKCN0ZT0YP> (last visited May 31, 2020).

<sup>61</sup> Id.

<sup>62</sup> The mine that displaced India’s indigenous people || Al Jazeera, , <https://www.aljazeera.com/blogs/asia/2016/07/displaced-india-indigenous-people-160707062855721.html> (last visited May 20, 2020).

evicted or removed from the Forest Land under his occupation till the recognition and verification procedure is complete. Under Section 48 of the RFCTLARR Act, 2013, a National Level Monitoring Committee for Rehabilitation and Resettlement has been constituted for the purpose of reviewing and monitoring the implementation of rehabilitation and resettlement schemes and plans related to land acquisition under the RFCTLARR, 2013 and National Rehabilitation and Resettlement Policy, 2007. Even the Panchayats (Extension to Scheduled Areas) Act, 1996, also provides that the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas or development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State Level.

In spite of Constitutional safeguards and State Schedule Area Regulations and Tenancy laws for the protection of tribal land there is a continuous process of land alienation by non-tribals in connivance with the instruments of the State.

## **VI. CASE STUDY OF TRIBAL LAND ALIENATION BY CORPORATE HOUSES IN CHHATTISGARH**

Sharda Energy and Minerals Limited has purchased the entire tribal land in Kerkachhar village of Baloda block in Janjgir-Champa in the name of only three tribals. One Jaykumar Paraste has bought 24 hectares of land worth 2.84 crores from 35 tribals. However, no one knows the whereabouts of Paraste. Videocon bought 28 hectares of agricultural land worth 3.36 crore in the tribal villages of Gond and Gadpali in Janjgir Champa to set up 1,200 MW power plant. It bought land in the name of Bilam Singh from Kabeerdham. Further, the case study indicates that Government land records show at least 1,981 cases of transfer of tribal land to non-tribals in the past three years.

In Mahasamund, 150 cases of such kind were recorded for investigation by the Commissioner in 2011. In Bastar, a Scheduled Area district, 63 cases of tribal land transfers to non-tribals, were registered. According to a 1964 Act that is in force in Chhattisgarh, a non-tribal may not buy a tribal land; he can only do so with the permission of the Collector and the Commissioner. Therefore, researchers have raised the question as to how tribal land, on such a large scale has been alienated. Further, there have been violations of PESA which endow Gram Sabha “the power to prevent land alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienated land of a Scheduled Tribe.”

The case study reveals that people have started organizing themselves to protect natural

resources and resources of their livelihood under the banner of Jashpur Jan Sangharsh Samittee, Jashpur and Chhattisgarh Visthapan Virodhi Manch, Raipur against the unconstitutional and illegal way of exploring minerals and alienating tribal land in the name of development and thereby destroying their traditions and distinctive cultures and disrupting well-knit communities. It is clear that all this is taking place with the connivance of official machinery. In such specific cases as brought out by the case study, the State should get the matter enquired and take action for restoration and prevent further tribal land alienation.

## **VII. CONCLUSION**

We agree with the disposition made by the “The Standing Committee Report on Land Acquisition, Rehabilitation and Resettlement Bill of 2011”, for providing that there should be no alienation of any land for a tribal area and even if a land has to be taken for special purpose; there should be increased compensation and resettlement and rehabilitation provisions so that the communities do not lose on their economic opportunities, language, culture and community life of the tribal communities.

Where public purpose projects are unavoidable, extraordinary arrangement ought to be made for expanded remuneration and resettlement and restoration arrangements that implement stricter conditions, for example, migration in a comparative natural area, with networks being compulsorily moved together in order to safeguard the monetary chances, language, culture and network life of the innate networks.

Further it should be ensured that the consent or approval by majority of Gram Sabhas and Autonomous District Councils (ADC) is taken and not limited merely to consultation with them. There is a need for neutral people to watch the proceedings of discussions within the Gram Sabhas/ADCs to ensure that the whole process is transparent and takes care of all related issues for the benefit of the Scheduled Tribes.

The Government and the Judiciary should take cognizance of Para 3 of the Fifth Schedule which provides for the Centre to issue directions to the State Governments regarding administration in Fifth Schedule areas. Thus, the Central Government must become a full stakeholder in land acquisition proceedings in tribal areas, including the Fifth Schedule areas and non-scheduled areas which have a substantial tribal population.

There should also be implementation of the legislation which will not adversely affect the autonomy, rights and interests of Schedule VI States and Autonomous District Councils, whether established by the Centre or the States concerned.