

वी. किशोर चन्द्र देव
V. KISHORE CHANDRA DEO



मंत्री
जनजातीय कार्य एवं पंचायती राज,
भारत सरकार
शास्त्री भवन, नई दिल्ली-110001
MINISTER OF TRIBAL AFFAIRS
AND PANCHAYATI RAJ
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110001

4 APR 2013

Dear Hon'ble Governor,

The main challenge that is staring at us today is the explosive situations that are prevailing in the Schedule V Areas of our country. These areas are inhabited largely by people belonging to the Scheduled tribe communities, forest dwellers and other marginalized and deprived sections of our society. It is, therefore, not a matter of co-incidence that we are today faced with a situation that is threatening to strike at the very roots of the basic structure of our polity and have become a threat to our national security, **a fact that has even been** mentioned by the Hon'ble Prime Minister on more than one occasion.

2. The **movements of Left Wing extremism have been fuelled** and propelled in the heartland **over the last two decades**. The root cause of **this situation is**, however, result of continuous exploitation, oppression, deprivation, neglect and indifference for decades. Hon'ble Supreme Court has said that naxalism was an over-sight of constitutional provocations relating to administration of Scheduled Areas and tribes of the country. **A Bench of the Supreme Court led by Justice A.K. Patnaik said "Nobody looks at Schedule V and Schedule VI of the Constitution and the result is Naxalism. Urbanites are ruling the nation. Even several Union of India counsels are oblivious of these provisions under the Constitution."**

3. Denudation of forests on a massive scale by the timber lobbies and the diversion of forest land for industrial purposes along with indiscriminate mining activities and the inundation of large forest tracts, for irrigation projects have deprived the local inhabitants of all **their pre-existing rights alongwith** their sustainable sources of livelihood. People who were living in such areas in different parts of the country have been rendered homeless and lamentably hundreds of children have been orphaned.

4. **Our insensitivity to the plight and problems of this entire population is the greatest challenge that the nation is facing at present.**

5. Schedule V Areas as you would all agree very sensitive regions. The occasion for my addressing this letter emanates from the situations in several sensitive areas which have assumed alarming proportions rendering

governance for all practical purposes, **marred to an extent that in certain areas governance has come to a standstill** by upsurge of extremist activities. The crucial fact which needs to be underscored and which forms the root cause of disturbance in Schedule V Areas is the yawning gap as far as development and provision of basic needs of the people **such as provision of potable drinking water, communication facilities, education and health needs in most of the regions located in Schedule V Areas.** These combined with various factors which also pertain to land related issues have solely led to a stage where governance has been very badly affected in these parts. **All this has added to the woes of the people.** In some parts of the Schedule V Areas there has been no governance at all. The resultant adverse impact has been the kind of parallel governance, which of course tends to strike at the very root of our democratic polity. **One of the main concerns of late has been the prospects of mining which has become a threat to the inhabitants of the Schedule V Areas** for various reasons such as dislocation of the tribals/forest dwellers/ecological imbalances and also law and order problem emerging from angst among the affected people in Schedule V Areas. **Here I would like to further dwell on this aspect. The main threat today is the mining in Schedule V areas which has shaken the confidence and faith of the people in the region in our democratic system. In many cases powerful lobbies are trying to encourage mining themselves in flagrant violation of constitutional provisions and safeguards guaranteed by our founding fathers and also in utter contempt of land transfer regulations which have been enacted by various State Government and without any regard to other prevailing laws of the land. It is most shocking and revolting that certain State governments for instance, State Government of Andhra Pradesh where higher echelons of powers are themselves trying to brazenly distort not only the laws but constitutional safeguards against the interests of tribals and other dwellers in forest areas.**

6. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 [FRA] is one of the flagship initiatives of the UPA Government. This watershed legislation has been enacted to undo the injustice done to scheduled tribes and other traditional forest dwellers from the days of yore by restoring and recognizing their pre-existing rights. This laudable social welfare legislation can have its meaningful application only when the rights of scheduled tribes and forest dwellers are handled and rightfully settled in all parts of the country. However, as the ground reality indicates these rights have yet to be settled in many regions owing to disturbances which have been arising from indiscriminate and rampant mining in Schedule V Areas. It is high time that the Forest Rights Act has to be effectively implemented with a view to safeguard the rights as envisaged in this legislation upon the scheduled tribes and forest dwellers. It also becomes imperative that the constitutional safeguards as envisaged in Schedule V to the Constitution and effective implementation of land laws of States are also secured.

7. The enactment of 2006 Forest Rights Act came as a ray of hope to the Scheduled Tribes and the other traditional forest dwellers. This watershed

legislation as already mentioned by me sought to reverse the situation and correct the historic injustice by identifying and regularizing the pre-existing rights of these people. The Supreme Court has observed that *"One law can make a big difference. Zamindari abolition act is a good example, how a law can reverse the situation."* **The Court also observed that "it was not the State but its forest departments' officers who did not want to give up their control over the forests."** **The Supreme Court also held that "There is apparently no human-tiger conflict at least as far as these tribals are concerned.** *Everyone must remember that forests belong to forest dwellers. British Government considered forests of immense value and said through laws that all forests belonged to government. These people were brought down to poverty and they couldn't earn their living. They will be arrested for consuming the forest produce; such was their law."*

8. In this context I wish to draw your attention to the provisions of Article 244 of the Constitution of India read with Schedule V of the Constitution which vests of independent legislative authority on the Governors of States which is wide and plenary. This power of the Governor to make regulations for the 'Peace & Good Government' of the Scheduled Area (or part thereof) is not restricted to any entry or entries of the legislature list in Schedule 7, but covers wide area of subjects which could conceivably fall under the category of Peace & Good Government. Under the provisions of para 5 of the Fifth Schedule to the Constitution, the Governor "may by public notification direct that any particular Act of Parliament or of the legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State". Paragraphs 3 and 5 of the Schedule V to the Constitution have made it abundantly and explicitly clear that the powers of the **Governors are unbridled and unfettered. The Governor may repeal or amend any Act of Parliament or of the legislature of the State or any existing law which is for the time being applicable to the Area in question, when good governance or peace is disturbed due to issues related either with land or money lending.**

9. It has been held by the Courts of Law that the Governors have full power to make regulations which are laws and just as Parliament enact that a piece of legislation which applies to a particular State, similarly under Clause 5 of the Vth Schedule, Governor can apply specific laws to the Scheduled Area.

10. Upholding the Governor's power under the Vth Schedule, the Attorney General for India had also opined that **"In performance of the functions and exercise of powers under the V schedule, the Governor is not bound by the aid and advice by the Council of Ministers of the State".**

11. As may be seen, basically in terms of the provisions of Article 244 read with Schedule V to the Constitution, the Governors have broadly speaking the following powers;

- (1) Legislative
- (2) Executive

(3) Supervisory and regulatory powers

12. The founding fathers of our Constitution in their wisdom and their foresight bestowed the above powers as enshrined in the Constitution Article 244 which empowers the governors of the States with special powers in Schedule V Areas. But unfortunately, in 65 years of independence there is not a single instance where these powers have been invoked by any Governor in Schedule V Areas.

13. It is in the present scenario that it is all of the more relevant that the Governors invoke their powers which are enjoined upon them under the provisions of Article 244 read with Schedule V to the Constitution. I would like to highlight here that as far as legislative powers are concerned, the Governors will have to get the advice of the Tribal Advisory Council (TAC) and thereafter make a reference to the President of India before invoking their legislative powers. *However, it would be significant to note that as far as executive powers are concerned, there is no need for any reference to the President of India much less seeking advice of TAC.*

14. The executive powers can be invoked in relation to the issues pertaining to peace and good governance and matters relating to land alienation or money lending. In such a case the governor has to simply invoke his executive powers and thereafter submit the matter to the President of India for ratification. Of late there have been instances where some State Governments have facilitated signing of MoUs with non-tribal entities for carrying out mining in Schedule V Areas. Such scenarios have led to upsurge of extremism and resultant law and order problems. It is under these circumstances that the Governors can by invoking their executive powers as discussed above revoke such lease agreements and MOUs which are violative *abnitio* of the constitutional safeguards, provisions of land protection of States and other prevailing laws of the land. ***In this context I would also like to emphasize the fact that the leases and MoUs are mere arrangement/agreements between two parties and are not enactments of either Assembly or Parliament.*** Hence, for revoking these agreements and MOUs, the Governors would simply have to invoke their executive powers and as already discussed for invoking such powers there is no requirement as such for prior consent of Council of Ministers, TAC or reference to the President of India. Basic intent of Article 244 of the Constitution, read with provisions of Schedule V to the Constitution is that rights of Scheduled Tribes in Scheduled Areas are not trammled upon. Where State Governments authorize Public Sector Undertakings or Companies controlled by State Government to enter into MOUs or agreements for mining prospects in Scheduled Areas, a death knell is sounded shaking the very edifice of constitutional safeguards for protection of rights of Scheduled Tribes in Schedule V areas.

16. In the end I would like to once again state that in cases of projects where large scale submersion and acquisition of lands in Schedule V Areas takes place, the same has resulted in dislocation of schedule tribes in large numbers, their only source of livelihood, their land rights under FRA and also impinged upon our constitutional safeguards which have been provided

to them under Schedule V to the Constitution of India. **These are, to say the least, matters of grave concern.**

17. **There is no time like the present for the Governors to invoke their powers under the provisions of Article 244 read with provisions of Schedule V to the Constitution for ensuring good governance; securing the rights of scheduled tribes and forest dwellers (who are the most marginalized sections of our society) and also for ensuring peace in several disturbed areas of our country.**

18. *I, therefore, beseech upon your Excellency for your benign condescendence upon my aforementioned facts for proactive intervention in this most unprecedented scenario even while events tend to overtake us.*

With best wishes and regards.

Yours sincerely,



(V. KISHORE CHANDRA DEO)

[All Governors of Schedule V Areas]