State Sponsored Armed Conflict: The Salwa Judum and the State of Chattisgarh

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Joseph Stalin once said, “One death is a tragedy, a million is a statistic”. Human emotion does not seem to ponder about the deaths occurring in numbers but seems highly passionate about the death of one being. The story of the Salwa Judum in the State of Chattisgarh is no different. Every month more than 300 people die as a result of fighting between two groups and till date more than 40,000 are displaced. The idea of violations and crimes in numbers just seems to baffle us.

The ‘Salwa Judum’ in Chattisgarh is termed by the government to be an anti-maoist force formed by the common man himself. For those sitting in the seats of government power, it is an alternative to tackling the Maoists and anti-naxalite factions in the state. But there is something more to it. In December 2005, a fourteen member team from five organizations all over the country conducted an investigation and the revelations were shocking. What the Chattisgarh government calls an anti-naxalite force seems to be more of a state sponsored private army supplied with guns, ammunition and basic supplies to deal with the Maoists. On the basis of the fact-finding, three facts stood out strongly, First, that the Salwa Judum is not a spontaneous people's movement, but a state-organized anti-insurgency campaign. Second, the situation is not one where the ordinary villagers are caught between Maoist-State clashes. Rather than

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2 The Study was conducted by People’s Union for Civil Liberties (PUCL) Chhattisgarh, People’s Union For Civil Liberties (PUCL) Jharkhand, People’s Union for Democratic Rights (PUDR) Delhi, Association for the Protection of Democratic Rights (APDR) West Bengal, and Indian Association of People’s Lawyers (IAPL). The details of the Study can be found at [http://www.pucl.org/Topics/Human-rights/2006/salwa_judum.pdf](http://www.pucl.org/Topics/Human-rights/2006/salwa_judum.pdf) (last visited 12th May, 2007).
questioning its own nonperformance on basic development, the government has resorted to clearing villages on a large scale. Tens of thousands of people are now refugees in temporary roadside camps or living with relatives with complete disruption of their daily lives. Prospects for their return are currently dim. Third, the entire operation, instead of being a peace mission as it is claimed, has escalated violence on all sides.3

The Salwa Judum is a force in the State of Chattisgarh led by elitist landowners, traders and trained by State police personnel. Not only that but these personnel are paid salaries out of State funds.4 The facts in this regard are disturbing. There are child soldiers prevalent amongst the armed people. More than 40,000 tribal people have been displaced till date and 80% of the population in DanteWara district in Chattisgarh have been victims of the clashes.

There is no doubting the fact that atrocities and human rights violations have been committed. More importantly, the problem is that it is a state sponsored armed conflict. To tackle the naxal menace, the state seems to have formed a private army and removed the burden from state forces. In most territories, civilians belonging to the Salwa Judum are seen carrying around guns and ammunition and not even a single state police group is within the area. The problem does not stop here; both the forces are known to kill civilians who should not be a part of this conflict. There is evidence of torture techniques being used, rapes and a host of other human rights violations.

Questions need to be answered. Can the state sponsor a private army to handle an internal disturbance? Can the state discharge its constitutional duty to protect, if any and hand it over to

3 Ibid.
4 “War in the Heart of India: An Enquiry into the ground situation in Dante Wara District, Chattisgarh”, Independent Citizen’s Initiative, 20th July 2006.
private groups? The idea of state sponsored conflicts is clearly in violation of UN principles\(^5\) and other international obligations. Protocol II of the Fourth Geneva Convention categorically puts forward the rights of victims in non-international armed conflict. These include the provisions of basic needs, health and compensation.\(^6\) Furthermore, without doubt, the State has a primary constitutional duty to protect its citizens from any disturbance; external or internal.\(^7\) The maintenance of law and order in the territory of the state is a constitutional obligation that states must follow. The Supreme Court has used this explanation in the cases of terrorism as in *Kartar Singh v. Union of India*\(^8\), and AN Ray C.J. in *ADM Jabalpur v. Sivakant Shukla*\(^9\) used this obligation to justify the violation of rights during emergency. If such explanation has been used in these cases then certainly they are applicable in this instance too and no exceptions can be created.

The discharge of such an obligation is inherently related to the power-responsibility equation. If power is to be delegated, which in this case is to deal with naxal factions, so must responsibility and both of them can’t be separated. Not surprisingly then, no one seems to be taking responsibility for the violations and deaths of civilians in Chattisgarh while the power seems to have been conspicuously discharged and frequently used and abused.

In May, 2007, Nandini Sunder and Ramchandra Guha filed a petition before the Supreme Court challenging the Constitution of the Salwa Judum in Chattisgarh. While the case is still *sub judice*, I would like to put forth an observation of the Court in this regard. Initially the Bench

\(^{5}\) UN General Assembly Resolution 49/60 of 1995, *Measures to eliminate terrorism*: UN Security Council Resolution 1373/2001. Also to be noted is the *Lockerbie Case* (UK v. Libya), 1992 ICJ Rep. 3 where Libya’s sponsoring of activities was held in violation of International Law.

\(^{6}\) Protocol II, Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287. Though India is not a party to this Convention, it still has a customary obligation to protect such people.

\(^{7}\) Article 355, Constitution of India. A reading can also be inferred from the Directive Principles of State Policy.

\(^{8}\) *Kartar Singh v. Union of India*, (1994) 3 SCC 569.

consisting of Chief Justice KG Balakrishnan and Justice Raveendran asked counsel that when the
Central Government in its assessment to control naxalites menace permitted local restraint
groups to be armed, “should the court interfere in such a policy. You must understand that
naxalites go on killing innocent people in villages. The police are not coming to the rescue of
these people. What is wrong in arming the local people to counter the naxal menace.”

(Quoting the Court)

Only after the atrocities and human rights violations were bought to the notice of the Court did it
issue a notice to the Government of Chattisgarh to respond it. It is interesting to note the
observation of the Court in this regard. With all due respect, the Court has commented that the
formation of a state sponsored army is justified to meet the end of handling the naxalites. In
doing so, the Court has again given sanction to a means-end approach. That is, state action is to
be held valid if it is purposeful in nature and meets a desired end. Such is the approach taken by
the Court in the case of terrorism and emergency. The Naxal problem just got itself temporarily
added to the list. This seems to attract Jhering’s notion of law serving as a means to an end.
Accordingly, in such a purposeful evaluation of law, even if it sacrifices individual liberty, it will
be valid. To quote from Kartar Singh’s case

“that it has been felt that in order to combat and cope with such activities effectively, it had
become necessary to take appropriate legal steps effectively and expeditiously so that the
alarming increase of these activities which are a matter of serious concern, could be prevented
and severely dealt with.”

2001, p. 703.
13 Kartar Singh v. State of Punjab, (1994) 3 SCC 596. The approach was further upheld by the Court in People’s
With this application of this approach, the Court seems to discount the fact that rights and constitutional obligations are inalienable and cannot be discarded to meet an particular end. The point needs to be noted here that not only has the state *outsourced* its duty to protect its citizens but also has given them a free hand do commit human rights violations and not hold them accountable for killing people. Such state action cannot be justified at any cost. It is hoped that the Supreme Court would take note of such rights violations, disband the Salwa Judum and concentrate on the welfare of the lakhs of tribals in the State who have fallen victim to the clashes. The law has been violated and someone has to be held accountable for it and the State cannot get away with this.