

“JURISPRUDENTIAL ANALYSIS OF SALWA JUDUM: STATE V. INDIVIDUAL CONFLICT”

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INTRODUCTION

“Salwa Judum” which literally translates to "Peace March" or "Purification Hunt". The term has its origin from the Gondi language. It was a militia, organized and employed, to counter Naxalite violence in the region with the plan to conduct counter-insurgency activities in Chhattisgarh, India. The militia, composed of local tribal youth, was supported and trained by the state government of Chhattisgarh.¹ It was outlawed and forbidden by an order of the Supreme Court, but it still exists in the form of Armed Auxiliary Forces, District Reserve Group and other vigilante organizations.² Salwa Judum, initially, began as a state-sponsored vigilante movement against the Naxalites, a far-left organization with Maoist ideology in some rural part of India, states that India designates it as a terrorist organization because of its violent operations. The movement, later, received bi-partisan support from both the government as well as the opposition. It, as reported, ascended spontaneously and was started by a group of villagers, who were annoyed that their agricultural produce was acquired to feed the guerrillas wandering in the forest. This movement gained lime light and Salwa Judum was soon embraced and redesigned by the leading politician of Dantewada, Mahendra Karma. The state government was persuaded to use its influence to help and support the movement. Around 3,000 Salwa Judum supporters were given the title of a special police officer and they were each given a monthly salary by the state along with a rifle. Their primary job was to keep the acts of civilians under surveillance, and to help the police and paramilitary in capturing the revolutionaries and Naxalites.³ In 2008, the neighboring states of Chhattisgarh along with Jharkhand, accounted for

¹"Salwa Judum - menace or messiah?", The Times Of India, (Last accessed on Sep 09, 2019, 8:44 pm).
[_https://timesofindia.indiatimes.com/india/Salwa-Judum--menace-or-messiah/articleshow/5704885.cms?referral=PM](https://timesofindia.indiatimes.com/india/Salwa-Judum--menace-or-messiah/articleshow/5704885.cms?referral=PM)

²Vivek Deshpande, "Left in the lurch" The Indian Express, (Last accessed on Sep 09, 2019, 8:49 pm).
<http://archive.indianexpress.com/news/left-in-the-lurch/815252/0>

³J. Venkatesan, "Salwa Judum is illegal, says Supreme Court", THE HINDU, (Last accessed on Sep09, 8:54 pm).
<https://www.thehindu.com/news/national/Salwa-Judum-is-illegal-says-Supreme-Court/article13639702.ece>

over 65% of the total Naxal violence in the country.⁴ Chhattisgarh, as a part of its state action trained a group of 'Special Police Officers' or SPOs, commonly known as Koya commandos. These people were assembled from nearby tribal areas and villages and were an essential part of Salwa Judum.⁵ The initial press reports on Salwa Judum were complimentary and applauding. It was described as a collective effort of people, independent of party politics, which had effectively fought against the Naxalites and thus proved worthy of implementation by other districts and states. The reports were more appealing as they asserted the fact that while Karma is a Congressman, its gusto for Salwa Judum is shared and supported by the BJP, with the support of then Chief Minister of Chhattisgarh. Later, the press reports became ambiguous and lacked any factual backing. The movement was reported to have gone awry and it ended up in harassing villagers the same way Naxalites had. On July 05, 2011, the Apex Court in a case filed by Professor Nandini Sundar declared this armed conflict to be illegal and unconstitutional, and ordered its dissolution. The Court directed the Chhattisgarh government to recover all the ammunitions and substances. The use of Salwa Judum by the government for anti-Naxal operations was criticized for its violations of human rights and poorly trained youth for counter-insurgency roles. It also ordered the government to investigate all instances of alleged criminal activities of Salwa Judum.⁶ On 25 May 2013, the founder of Salwa Judum Mahendra Karma, who was a senior Congress party leader was killed in a Naxalite attack.

ORIGIN OF “INDIVIDUAL V. STATE” CONFLICT

Ethically as well as constitutionally, one of the major societal issue of the twenty first century is whether the State is to be the master or the servant of its individual citizens. In both the cases, Liberty to citizens is both fundamental and intrinsic in nature. The status and functioning of Salwa Judum raises a pertinent question of conflict- the conflict of State and Individual. Even though, this movement had originated independently, it rapidly conformed into the political agenda of Mahendra Karma. The analysis of the entire movement and its consequences portrayed the following observations. The origin of “special police officers”, created a societal atmosphere of machismo among the unemployed youth of the district. This decision was the brainchild of the State and hence, it earned legitimacy. People selected for this job weren't the well-educated youth, but young boys who received little education, those who didn't have a very

⁴ “Centre gives its tacit approval to Salwa Judum”, The Times Of India, (Last accessed on Sep 09, 2019, 8:59 pm).<https://timesofindia.indiatimes.com/india/Centre-gives-its-tacit-approval-to-Salwa-Judum/articleshow/3948503.cms?referral=PM>

⁵ “CoBRA reaches Bastar to join anti-Naxal ops”, The Indian Express, (Last accessed on Sep 09, 2019, 9:04 pm).
<http://archive.indianexpress.com/news/cobra-reaches-bastar-to-join-antinaxal-ops/419612>

⁶ Supra note 3.

respected position in the society and weren't financially well off. Thus, it was easy to lure them into a job which paid them a salary Rs 1,500 a month (though a meagre figure, but it was quite significant for them), and gave them a certain status in society- status of being a government servant. Along with that, these young disillusioned boys had a gun in hand, it was a license to march around the countryside, forcing those without weapons to fall in line. This extraordinary function to regulate the area was propagated by the State. However, it is important to note that when the State goes beyond its regular functions to maintain law and order at home and provide protection against foreign aggression or internal conflict, it starts to acquire the role of a regulator, and it no longer knows where to draw a line and when to stop. One step of misappropriation of power leads to another, and the democracy, that we so cherish, fosters into the totalitarian State. Consequently, we must also carry the discipline and essence of constitutionalism, whose foundation is the accountability of authority and power, whereby the authority of the individuals in any State organisation and its agents can only be used to promote constitutional values and vision. This case represents a “*yawning gap between the promise of principled exercise of power in a constitutional democracy, and the reality of the situation in Chhattisgarh*”,⁷ where the State, claimed that it had authorization as per the Constitution to execute, indeterminately, a regime of blatant violation of human and fundamental rights of individuals by implementing the methods as adopted by Maoist/Naxalite extremists. The State also claimed that it possessed the power to arm thousands of illiterate or scarcely literate young boys and men of the tribal regions, with guns, and appoint them as temporary police officers or SPO, with a meagre training, and with even slighter precision about the chain of commands to control the activities of such a force, to fight the combats against alleged Maoist extremists or Naxalites.

ULTRA VIRES ACTIONS OF STATE: DANGERS OF SPO

Ironically, the State did not realize that by going *ultra-vires* and arming these illiterate civilians, it has built another group adopting similar methods as Naxalites. These boys joined Salwa Judum not to combat Naxal attacks or out of the spirit of nationalism but for exactly the same reason as other boys had previously joined the Naxalites. They are not enthusiastic about farming or hunting but were attracted by the prospect of a quasi-formal position and the benefits that came along with it. During the movement, the state appeared to have outlawed rules and regulations to operate Salwa Judum. As per the reports, it was the SPO or Salwa Judum supporters, and not the uniformed police, who enjoyed real control. This control and regulatory position was not used

⁷ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.

wisely at all times. For instance, a driver of a media vehicle had a knife placed at his throat, and his CDs snatched. The common and ordinary people have deeply felt the rage of the Salwa Judum group in a more grievous manner. There were several villagers of the nearby regions whose homes had been looted and burnt by them. On the other hand, there were villagers who had been attacked by the Naxalites. Thus, the most disappointing conclusion is that Salwa Judum greatly increased the intensity and frequency of violence in Dantewada. Mahendra Karma, in an interview claimed success of the movement, by the assertion fact that the Maoists had to send in reinforcements from other districts to combat Salwa Judum. He did not realize that this assertion was self-defeating the objective of the movement as it did not expel the brutal rule of Naxalites but in turn increased their number. Like all demagogues, Mahendra Karma had no ear and eyes, except for the sound of his voice and the sight of his desire. He did not understand the fact that his ambition caused grievous harm to national interests, particularly the objectives of swearing human dignity, with brotherhood amongst other groups and unity and integrity of the country as a whole. Given historical accounts of humanity and experience with unrestrained power, it formulates its own rules and ethics, and such actions its own "*raison d'etre*". This uncontrollable power in the hands of State results dehumanization of people. The spirit of Constitution postulates that no exertion of power and control should be permitted to the extent that the right to commit violence against any one, unchecked by law, is claimed or it destroys notions of intrinsic human dignity of each individual. Any action taken by the State should not curb the individuality and liberty of a person. Whenever there is a conflict of interest while state is acting in good faith, it should keep in mind the basic human rights of its citizens.

MOVEMENT AGAINST FUNDAMENTALS TO GOVERNANCE

It is important to note that people do not opt for the method of arms, in a systematized technique, against the will of the State, or against fellow human beings without a reason or motive. One instinct that governs all individuals is the instinct of survival and objective to live. Thomas Hobbes while explaining his Social Contract Theory said that we seek an order to overcome the perpetual fear of lawlessness that is encrypted in our collective conscience. We seek law and order for survival and peaceful living.⁸ In his book *Leviathan*, Hobbes stresses upon the difference between the actor, the representative and the author- the entity who owns the actions and words of the actor. Hobbes, then, highlights that where the authority or the granter of legitimacy is evident, the 'covenant obliges the author, not the actor'. Nonetheless, we still see several instances where the state, almost habitually, turn to vigilantism, perhaps as an

⁸ "*Thomas Hobbes: Moral and Political Philosophy*", Internet Encyclopedia Of Philosophy. (Last accessed on Sep 09, 2019 3:10 pm). <https://www.iep.utm.edu/hobmoral/>

attempt to shirk off responsibility. The International Court of Justice in the case of *Prosecutor v. Tadic* and *United States of America v. Iran*, also known as the 'Iran Hostages case', specifically noted that the states would be made liable for the act of financing, supporting and endorsing the activities and violent actions of the militia or these vigilante groups even if they were not the ones who issued those explicit instructions. In the case of *Nandini Sundar v. State of Chhattisgarh*, the Supreme Court made a reference to the teachings of Thomas Hobbes. The Apex Court holds that people don't unnecessarily or without motivation take up arms in an organized fashion against the State or against the community. They are guided by the primal need for survival and as Hobbes contends, the fear of lawlessness, which is inherently a part of the group conscience, makes the people seek an order. Nevertheless, if that order starts with the process of dehumanization, price of gross miscarriage of justice perpetrated against the weaker section of the society, the poor and the deprived, people start the rebellion against this unjust order⁹. It is evident by accounts of government and media reports that large areas of the State of Chhattisgarh have been disturbed by Maoist activities and several Naxalite attacks have been inflicted on the people. It has also been widely known and reported that people of Chhattisgarh have suffered significantly, not only because of these Maoist uprising but the counter insurgency unbridled by the State. The situation in Chhattisgarh is unquestionably worrisome to any prudent person. The problem, prima facie, would look like to every reasonable person, is the action of the people of Chhattisgarh. However, it is important to understand that the root of the problem is not the people of Chhattisgarh. Their human rights are widely recognized to be violated on a large scale by the Maoists/Naxalites as well as the State. The State has repeatedly implemented policies that have resulted in the rapid resource exploitation by the private industry, without credible obligations to a fair distribution of benefits and costs and sustainability of the environment. These policies are undoubtedly violative of "fundamentals to governance", and when such a violation occurs on a large scale, they essentially disembowel equality before law, and equal protection of the laws, as promised by Article 14, and the right to life with dignity as assured by Article 21.¹⁰

FAILURE OF STATE IN PROTECTING INDIVIDUAL RIGHTS

Analyzing the causes of failure of several nation-states, Robert I. Rotberg, a professor of the Kennedy School, Harvard University notes, States success or failure is measure along certain dimensions. It is according to their performance that powerful countries can be distinguished

⁹ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.

¹⁰ "*The Adivasis of Chhattisgarh: Victims of the Naxalite Movement and Salva Judum Campaign*", ASIAN CENTRE FOR HUMAN RIGHTS.

from weak ones, and weak states from failed or collapsed countries, depending on the levels of their efficient distribution of the most important political products. None, particularly human security, is as essential as providing safety. Individuals alone can try to secure themselves, almost solely in unique or specific conditions. Or organizations of people can join forces to organize and buy products or services that maximize their feeling of safety. Traditionally, however, and usually, individuals and groups can not readily or efficiently replace the complete range of public security with private security. The primary role of the state is to provide that political security good-to avoid cross-border invasions and infiltrations, to eliminate domestic threats or assaults on the national order and social structure. And to stabilize people, without recourse to weapons or other types of physical coercion, to resolve their conflicts with the state and its fellow human population.¹¹ Our Constitution states that unless we ensure social, financial and political justice for all who for our people, we would not have attained human dignity for our people, nor would we be able to foster fraternity among their communities. Policies that run against this vital reality necessarily destroy domestic unity and integrity. The creation of circumstances of violent politics is a forbidden characteristic of our Constitution to pursue socio-economic policies that cause vast disaffection among the poor. Reaching such a scenario, actually because of such measures, and then claiming that there are not enough resources to deal with the resulting socio-political disturbances, and violence, within the framework of constitutional principles, amounts to abdicating constitutional duties. It would be an abandonment of a primary function of the State to argue that resource crunch prevents the State from creating adequate ability to ensure safety for its people through well-trained official police and safety forces capable of operating within the constitutional framework. Pursuing measures by distributing weapons among the poor among scarcely literate youth to regulate disaffection in such sections of the population would amount to sowing suicide pills that could divide and ruin society. Our young people are our most valuable resource to be nurtured for a better future. Given our country's endemic disparities and the fact that we are progressively a youthful population in a demographic sense, such a policy may necessarily contribute to national disaster. Our constitution is most emphatically not a "pact for national suicide."¹² At the very least, its vision allows us as constitutional guards to acknowledge and stop the development and stigmatization of a paradigm of police, the endpoint of which can only imply that the country as a whole, in short order, might have to gulp: "The horror! The horror!"¹³

¹¹Robert I. Rotberg, *"The Failure and Collapse of Nation-States - Breakdown, Prevention And Failure"*, When States Fail: Causes And Consequences, Princeton University Press (2004).

¹² Aharon Barak, *"The Judge in a Democracy"* (Princeton University Press, 2006).

¹³ *supra* note 7.

CONCLUSION

Salwa Judum was nothing but a dangerous strand of state action that may claim evolving out of the darkness that has begun to envelope our policy makers, however, it was aggregating blindness of the policy makers to values upheld by the constitution and constitutional wisdom. State endows the private sector, giving it repetitive tax-break, while concurrently it has reported lack of revenues for not gratifying its responsibilities to provide adequate facilities and shield to the poor, deprived and weak section and provide them with social welfare actions. Counter insurgency groups are more than often celebrated as a 'defense of democracy' and used for political motives as they evoke pro-government and anti-communist sentiments among the public. This is not the end of State being a hypocrite, it decided to arm the young poor with guns in order to fight combat the anger, frustration and discontent, amongst the poor. Such erroneous policies, defeat the necessities of our constitution which asks the power conferred to the State for the welfare of the people - all the people, irrespective of their class, rich and the poor, thereby promising requisites of human dignity within the realm of brotherhood amongst other groups. Neither Article 14, nor Article 21, or any other legislation can even vaguely and distantly be regarded as an excuse to draft such policies. They are inevitably and intentionally tarnished, and violated in an elemental sense by such policies. The development of such a swirling setting of dehumanizing our population's disadvantaged sections, where weapons are provided to them rather than books, to stand as guards for the rapacity, plunder and loot in our forests, would be to lay the way to domestic destruction. Such is the intensity of disintegration of life, and erosion of society.
