

## **Threat to the Fifth Schedule of the Constitution**

The Fifth Schedule of the Indian Constitution that provides protection to the Adivasi people living in the Scheduled Areas, is under imminent threat of being amended to effect transfer of tribal lands to non-tribals and corporates. This move has serious implications to the 80 million tribal population of the country, their very survival and culture.

There is a clear trend in the actions of the government which indicate the changes in policies and the following are the sequence of events in the recent past which have led to the present crisis:

### **The Supreme Court Judgement of 1997 and its aftermath:**

Samata, an NGO working in the scheduled area of Andhra Pradesh, filed a case against the Government of A.P for leasing tribal lands to private mining companies in the scheduled areas. The SLP filed in the Supreme court led to a historic judgement in July 1997 by a three judge-bench which declared that government is also a 'person' and that all lands leased to private mining companies in the scheduled areas are null and void.

*The salient features of this judgement are:*

94. As per the 73rd Amendment Act, 1992, ...."Every Gram Sabha shall be competent to safeguard.....Under clause (m) (ii) 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".

110. Minerals to be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State

112. In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as part of the project expenditure

114. Atleast 20% of net profits as permanent fund for development needs apart from reforestation and maintenance of ecology

115. Transfer of land in Scheduled Area by way of lease to non-tribals, corporation aggregate, etc stands prohibited

116. Renewal of lease is fresh grant of lease and therefore, any transfer stands prohibited

117. Transfer of mining lease to non-tribals, company, corporation aggregate or partnership firm, etc is unconstitutional, void and inoperative. State instrumentality's like APMDC stand excluded from prohibition

129. In the absence of total prohibition in some states with Scheduled Areas, Committee of Secretaries and State Cabinet Sub Committees should be constituted and decision taken thereafter

131. 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 tribal lands

### **Events after the Judgement:**

#### **Moves of the State Government of A.P and the Central Government:**

March 6th 2000	The Supreme Court dismissed the petitions of State & Central governments for modification of the Samata order.
May 2000	The Andhra Govt moved the Tribes Advisory Council for amendment to the LTR Act of 1959
July 10th 2000	The Ministry of Mines drafts & circulates a Secret note (Ref: 16/48/97-MVI) To the committee of Secretaries proposing an amendment of the V Schedule to overcome the Samata judgement to facilitate the leasing of land in tribal areas
August 2000	On popular protest and opposition the CM of AP issues a statement indicating withdrawal of the proposed amendment
September 21st 2000	Indian Express carried an article in the edit page exposing secret note of Ministry of Mines titled “ displacement not an issue” by Manoj Mitta
September 24th 2000	Again widespread protests against the proposed Bauxite mine in Tribal Areas of Visakhapatnam district forced the CM to come out with a statement differing the project which would come up in Scheduled area
September 30th 2000	A Action Alert was put out for starting a campaign to Protect the rights of tribal people under the banner of CPCNR (Campaign for peoples control over natural resources) and the secret note was widely circulated.
December 2000	A national consultation was called for at ISI Delhi on LA Act, V Schedule and R &R Policy, in which many Political parties also sent their representatives.
Till January 2001	Extensive coverage of this issue in the national & regional Media and many people & groups have written to the concerned minister including the PM & President
January 26th 2001	The president in his Republic Day speech issued a veiled Warning against plotting to amend the V schedule of the constitution (TOI, Feb 24th 2001)

February 2001	The BALCO divestment process was in progress and Raised a controversy on the V schedule & samata judgement. Chattisgarh Govt issued notices to Sterlite Central Govt in a hurry to settle the BALCO divestment process.
March 15th 2001	The controversy on the tribal land being leased to private company dogged the Central Govt and finally on March 15th the PM to a question by Arjun Singh replied in the Rajya Sabha that the Govt had no intentions of amending The V schedule to overcome the Samata judgement.
April 2001	The Central Govt moves the SC to post all cases related To Balco to its jurisdiction and the SC issues orders. The Much awaited opportunity to review the Samata judgement is opened again this time in the court of law.
May 11th 2001	Mr. Arun Shouire minister for disinvestment issues a statement that they want to review the samata judgement. Hindu Businessline May 11th 2001 New Delhi bureau

### **What the Government should have done but.....**

The government, instead of implementing the orders of the Supreme Court which gives strength and clarity to the Fifth Schedule, it has been undemocratic and unconstitutional in trying to not only ignore the directions, but also in its continued efforts to reverse the judgement.

In view of future mining activities, the Supreme Court had given certain clear directions on the course of action that could be taken by the government. It directed that the Prime Minister should convene a conference of all Chief Ministers and other concerned Central Ministers, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines, so that a consistent scheme throughout the country is emerged.

However, if the Constitution is amended for the sake of mining today, there will be many sectors which would justify acquisition of tribal lands for other 'development' objectives. This would only lead to tribals being completely destroyed and dislocated. The government has not taken any of these serious issues into consideration when it started its sale of the first public sector mining company in the scheduled area.

The opinion of the government is again blatant in its recommendations through the Attorney General Shri. Soli Sorabjee who had, ironically, appeared on behalf of the tribals in the Samatha Case. He clearly stated to the Ministry of Mines in the above mentioned Secret Document that

“ the Fifth Schedule to the Constitution of India can be amended to counter the adverse effect of the Samatha judgement”.

The Supreme Court can reconsider its previous judgement (Samatha case) if another pending case on a similar issue is brought before it. (In this situation, the Balco case which is pending for hearing at the Supreme Court, is being used by the government to amend the Fifth Schedule)

“The other course open to parliament is to effect necessary amendments so as to overcome the said Supreme Court Judgement by removing the legal basis of the said Judgement. Such a course of action is legally permissible.

### **Our Demands:**

All the above moves are clearly indicative of the anti-tribal moves of the Government and we demand that such moves should be immediately withdrawn. If there is any move to amend the Fifth Schedule, we will not accept it and assure you that there will be strong protests, agitations and unrest in the entire Fifth Schedule area which has a history of revolts and rebellions against state oppression or injustice.

### **OUR APPEAL:**

We hope that you take our concern seriously and join us in our fight to stop the amendment to the Fifth Schedule. We appeal to you to take it up with your respective party/government/union/association/organisation/community/university and any other fora to prevent such a constitutional disaster. We also appeal to you to bring this up as a very urgent and important issue to be immediately solved peacefully before the situation goes beyond control.

Samata	Hyderabad
Mines, Minerals & PEOPLE (mm&P)	Hyderabad
PEACE, SRUTI, Delhi Forum	New Delhi
SETU, Adivasi Ekta Parishad	Gujarat
JOHAR, Vistapit Mukti Vahini	Jharkhand
Ankuran, Orissa Adivasi Manch	Orissa
NCAS	Pune
Adivasi Khanij Uthkanan Samithi	Chattisgarh
ASTHA	Rajasthan
Academy for Mountain Environics	Uttaranchal

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