

A STUDY ON  
PROCESS OF ACQUISITION OF LAND FOR DEVELOPMENT  
OF MINING INDUSTRY IN SCHEDULE-V AREAS WITH A  
FOCUS ON VIOLATION OF PESA IN LIGHT OF THE MINING  
AND THE INDUSTRIALISATION PROCESS IN THE  
SCHEDULE-V AREAS

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## ABBREVIATIONS

AP	Andhra Pradesh
BALCO	Bharat Aluminium Company Limited
Gauchar	Common grazing lands in the village
GO	Government Order
LA Act	Land Acquisition Act, 1894
MCR, 1960	Mineral Concession Rules, 1960
ML	Mining Lease
MMDR	Mines and Minerals (Development and Regulation) Act, 1957
MNC	Multi National Company
MP	Madhya Pradesh
NMP	National Mineral Policy, 1993
NOC	No Objection Certificate
PESA	Panchayatiraj Extension to Scheduled Areas
PL	Prospective Lease
PR	Panchayat Raj
PRIs	Panchayat Raj Institutions
RMMCR	Rajasthan Minor Mineral Concession Rules, 1986
R&R	Rehabilitation and Resettlement
SDM	Sub-divisional Magistrate

## **EXECUTIVE SUMMARY**

### **Introduction**

- The Scheduled Areas of India are home to a bulk of the mineral resources and forests and as also tribals. The emphasis of the various five-year plans on industrial development and development of these resource based (mining) industries has taken its toll on the tribals who are residing in the scheduled areas. Of the total persons displaced due to various industrial projects almost forty percent have been tribals. Exact estimates of the tribals displaced are difficult to come by, however the mid term appraisal report of the Ninth Five Year Plan puts the figure at 2 crores.
- This is partly happening because the development process is top down and does not involve the tribals. To encourage a more participatory nature of development where the tribals have more rights to self-determination, the Government of India passed the Panchayatiraj Extension to Schedules Areas (PESA) Act, 1996. The act makes important stipulations related to land acquisition and awarding of mining leases – two factors most responsible for this alienation of the tribals from the development process. The exact provisions provide that a gram sabha has to be consulted prior to acquiring land and its recommendation is required for awarding a minor mineral lease.
- While promulgating the act in December 1996, the central government gave a time period of one year for the states with Scheduled V areas to modify their respective state laws to reflect the above stipulations and carry forth the spirit engendered in the act and its provisions. As it is more than six years since the act was first put in place there is a need to understand the extent and level of implementation of the basic spirit of the provisions.
- The present report is an outcome of the study conducted by Samata over an eight-month period from September 2002 to April 2003. The study objectives include: study the strengths and weaknesses of PESA empowering PRIs with regard to the acquisition of land for mining in scheduled areas, procedures followed for land acquisition and mining leases, nature and extent of violations and PRIs response to violations. In addition the study required Samata to delve into the aspect of public purpose vs land rights of tribals.

- The study methodology included extensive secondary research, interviews with communities, discussions with government officials, perusal of government records to understand procedure and also data collection from some companies doing mining. The study was limited to the states of Rajasthan, Orissa and Chattisgarh. Two districts from each state were selected for more in depth field data collection (from communities and companies). Formats were prepared for the same and the field data collection was done between the months of October 2002 to March 2003.

### ***Situational Analysis - Mining legislations and policy***

- The development and exploitation of minerals in India are the shared responsibility of the State and Central Government and the broad parameters are laid down in the Seventh schedule of the constitution itself. For the purpose of law, minerals in India are divided into major and minor minerals, a distinction based on strategic importance of the mineral and its nature of usage. A lease for mining a major mineral is given by the central government while that for a minor mineral by the state government. The Mines and Minerals (Development and Regulation) Act, 1957 (henceforth referred to as MMDR Act, 1957) lays down the legal framework for the regulation of the mines and development of all minerals<sup>1</sup>. The Mineral Concession Rules (1960) have been framed, under this act, for regulating grant of prospecting licences and mining leases.
- In 1993, the Government of India announced a National Mineral Policy. The policy acknowledges the lack of "adequate contribution to economic development" of the tribals due to mining activities in their region. It spells out a need to focus on involving them as part of the development of projects in the scheduled areas, even going to the extent of saying that they should be given preference in the case of small deposits.

### ***Situational Analysis - Land Acquisition***

- The Land Acquisition Act of 1894 is the basis on which the government acquires any private land. The act also prescribes the procedure for acquiring property. The act is based on the theory of eminent domain, that the State is sovereign and it has supremacy

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<sup>1</sup> other than petroleum and natural gas

over all natural resources. Thus, the State can compulsorily acquire any property, including private by the process of law. This is a central act and is applicable to all the states though they are allowed to make changes (amendments) as long as such changes are not opposed to the provisions as they stand in the act. One of the most contentious issues has been that of "public purpose" and the state government through its district administration has almost discretionary powers in this regard. The act does not provide any exhaustive definition of "public purpose" and merely gives examples of the kind of things, which can be considered as public purpose. The provisions in the PESA act related to land acquisition provides for a consultation with the gram sabha prior to acquisition of land. Though the act has not been amended to reflect this provision, in 1998, the Government of India issued executive instructions describing the modalities of consultation with the Gram Sabhas and detailing the procedure for land acquisition in schedule five areas.

### **Chattisgarh**

- The state of Chattisgarh follows the Madhya Pradesh Minor Mineral Rules, 1996 for administering minor minerals. There is a provision in the rules that no lease is to be sanctioned without obtaining **opinion** of the respective Gram Panchayat. Similarly the application for grant of a permit (fixed time and duration) is to be made to the concerned Zilla/Janpadh/Gram Panchayat. Quarry permit is issued only to the residents of the Panchayat where the quarry is located. The Gram Panchayat has to obtain prior approval of its Gram Sabha before final disposal of application for the permit. Also quarries of certain Minor Minerals whose annual income is up to Rs. Ten lakh have been handed over to the Panchayat. Revenue from all Minor Minerals is now given to the concerned Panchayat for developmental work. The rules also provide for preference to the members of Scheduled Tribe, Scheduled Caste, other Backward classes and ladies and their societies in sanctioning quarry leases of minor minerals.
- The Department of Mines, Government of Chattisgarh issued an executive order in December 2001, stating that lease applications for minerals available in lands of scheduled tribes in scheduled areas of the state should be sent to the State Government. The state government, as per instructions of the Supreme Court in the Samatha Vs.

State of AP and others case would present these applications to a cabinet secretaries level committee, which will be sanctioning authority in this regard. These orders addressed to the District Collector of Korba, were also issued to all the district collectors. However, the procedure of granting leases on other lands (other than individual tribals land in scheduled areas) remained the same. It appears that the executive orders were issued primarily in view of the BALCO case which was being fought in the Supreme Court at that time.

### ***Mining lease process - Chattisgarh***

- In Chattisgarh the mining lease applicant has to make the application at the district level irrespective of the mineral (major or minor). For minor minerals the district level units are empowered to make the decisions. The Tehsildar, mining inspector, forest department and Sarpanch have to give a No Objection Certificate (NOC) if the land that is to be mined comes under their purview. The Gram Sabha is consulted for obtaining the NOC for all prospecting and mining leases irrespective of the mineral being mined. The onus is on the lease applicant to obtain the NOC from the Gram Sabha. If the Gram Sabha does not give an NOC, the lease would not be awarded. However, it was not clear how the officers who scrutinize the applications make sure that the Gram Sabha was actually held.
- The officers were aware of the fact that Chattisgarh had adopted the MP State Panchayatiraj act, though they were not aware of all its provisions. They did not feel there were any major changes in the lease process due to the PESA Act. It appeared that the officers were considering the process of consultation with the Gram Sabha as a mere formality. This was also reiterated by the officers in the Panchayatiraj department. A suggestion put forth by one of the officers was to treat tribals as shareholders as they are the owners of land and should get priority and weight age when it comes to awarding leases. While this is mentioned in the rules and also in the policy statements of the state, there are very few avenues available to realize these pronouncements. The government has specifically stated that the weaker sections of the society would be given priority in leases, but the reality is that those who apply are discouraged (*refer- Case study of Markatola - Section 3.6.1*).

### ***Land Acquisition process – Chattisgarh***

- The applications for acquiring land are made directly to the revenue department at the district level. The state government has not issued any specific guidelines on Public Purpose and the district level units decide the context in which public purpose is to be applied. In case the project is abandoned after the land acquisition is over it is either renewed or the land goes back to the government, but in no circumstances is the land returned to the original inhabitants. The officers were aware of PESA and they mentioned that the gram Sabha is “consulted” in the process of land acquisition.

*Four case studies were conducted in Chattisgarh in the districts of Sarguja and Kanker. Some of the salient findings of the case studies in Chattisgarh are summarized in the next few sections.*

- Land acquisition for mining minor minerals is rare. As the lease area is very small the private mining company prefers to either get into individual negotiation or as in most cases the land is *gauchar*; traditionally village common land, but with Government control on it. For mining on such lands there was no process of consultation with the gram sabha or the gram panchayat in violation of the PESA Act. In none of the places is any alternate lands are shown when such common lands are handed over to the mining companies added to the fact that all the mine owners were non tribals.
- Most of the tribals who were earlier depending on agriculture for their livelihood are now completely dependent on the mines for daily wage. In most cases the payments are made on per load basis and the villagers are effectively getting less than minimum wages. In Tekka Dodda (a village which issued an NOC for mining), the villagers are struggling with the mine owner to obtain minimum wages!!
- In all the villages where mining has started the villagers were given to believe that their lives would improve and they would have regular income. However in all of them the villagers have started facing a problem due to the dust pollution, which is leading to respiratory problems.
- Even when all the rules for awarding the lease have been "followed", the villagers are facing problems due to the mining. This raises the question of whether the villagers are

making informed decisions or if they are being misled during the process of obtaining the NOC. Once an NOC is given they have very little control on what happens in their village. There is hence a need to ensure that the mining operators are responsible to the villagers even after they start mining and not just when they want a lease. While the government functionaries can play a role in this, their obvious bias is towards the mine owner.

- In one of the villages visited (Markatola) the Adivasis keeping in view the constant pressure by different companies to come and mine in their area formed their own cooperative to start mining. The Markatola Adivasi Khanij Utkanan Sramik Samiti is the kind of adivasi cooperative that the Supreme Court refers to in the Samatha Judgment and the Chattisgarh policy wants to encourage. Since inception the cooperative has been facing harassment from the government departments. They have managed to obtain the NOC from the gram sabha and right now their file is pending with the forest department, as there are some trees in the revenue land that they want to mine. “We’re being kicked around from one Government department to another. If we go to the mining department, they send us to get forest clearance. If we go to the forest department, they tell us this is revenue land and to go get an NOC from the collector,” says Indu Netam an active member of the cooperative. “If they can have single-window clearance for foreign mining companies, why can’t they have the same for adivasi cooperatives?” she asks. If PESA were strictly implemented, adivasi cooperatives could indeed be running these quarries and mines, perhaps in a far less destructive manner. “The cooperative members would provide the labour from within the village. We would share the profits and risks, and return a share to the village funds. Other villages could also use their resources wisely to generate employment for their own people and for the benefit of the whole village,” says Indu Netam.
- The word development has become the most hated term for the villagers of Khudaridih. The mining activity and the process of land acquisition has demoralised and broken the tribal community to a point where they consider themselves to be lesser humans.

- The villagers seldom have knowledge and understanding about their rights and responsibilities and provisions of PESA in Scheduled Areas. This leads to more exploitation and unfortunately the various field units of the government also do not sufficiently inform the villagers about their rights.

## **Rajasthan**

- Rajasthan promulgated the Rajasthan Minor Mineral Concession Rules on March 4<sup>th</sup>, 1986. The application for obtaining a mining lease is to be made to the mining engineer (or Assistant mining engineer) with jurisdiction of the area. The Officers in the Department of Mining in Rajasthan deal with the lease and licence process almost exclusively and the role of the rest of the district administration is very limited.
- The State's mineral policy, in force since 1994, encourages value addition through processing units and mineral-based industries, export of minerals and the exploitation of minerals deposits. As part of the effort the state wants to simplify and adequately modify the Rajasthan Minor Mineral Concession Rules (RMMCR) of 1986. In addition the policy stated that funds from other government programmes (primarily the rural development programmes) would be utilized for creating infrastructure for the mining industry. The policy also wants to make the process of obtaining the NOC easier and the mining department wants to reduce the role of the collector further in this regard.
- Keeping in view the Samatha judgment the State government has issued a GO (in 2000) through the department of mines and geology stating that all renewals, fresh leases to non-tribals in scheduled areas should be immediately stopped till further notice.
- After the PESA act of 1996, the state enacted the Rajasthan Panchayati Raj (Modification of provisions in their application to the Scheduled Areas) Act 1999. While this act has reflected most of the provisions of the central PESA act, they have in almost all cases qualified the provisions with the statement “as prescribed by the state government”. In 2002 the State government made rules for obtaining recommendation of the PRIs for grant of mineral concession in respect of minor minerals. The rules mention the PRIs at the different levels who can be the recommending authority for awarding mining lease. The rule provides for the recommending authority rejecting the

proposal, the reasons for which need to be recorded and communicated in writing to the concerned Mining Engineer/ Assistant Mining Engineer. The rules also provide for a clear cut guideline on what should accompany a request for a grant, thereby ensuring that the villagers are well informed prior to taking a decision.

- In Rajasthan, the mining department has to obtain the No Objection Certificate for the lease and not the applicant. The field visit to the villages revealed that it is the applicant who funds the gram sabha dinner, which follows the "issue of NOC".

### ***Mining Lease Process***

- In the case of a minor mineral the decision for awarding or rejecting a lease is made at the district level. The whole process of lease application has to be finished within one year, else it is considered as deemed rejected. All the revenue goes to the state government and there is no sharing with the district or village level. The officers of the mining department mentioned that the people's institutions are consulted at the pre lease level for obtaining their no objection certificate. The role of the gram Sabha or the gram Panchayat is limited to the consultation process alone; the actual decision of awarding is made by the mining department. As mentioned the gram sabha is held more in the form of a feast for the villagers and they are made to sign on the resolutions without any form of discussion.
- Most of state officer became aware of PESA after the amendment was done in the state Panchayat Raj Act. However, they did not have any detailed idea of the provisions. One of the officers opined that the PESA had complicated the procedure further, instead of simplifying it as is required for encouraging investment in the mining sector.

### ***Land Acquisition Process***

- For land acquisition the private party directly approaches the Land acquisition (revenue) department for acquiring the land. The application process starts at the district level where the Sub- Divisional Magistrate and Collector scrutinizes them, though this process, in some cases might start at the state level. The role of various stakeholders like villagers, company, government, etc. involved in the land acquisition process doesn't exceed beyond consultation but the Gram Sabha plays a major role, as

they have to issue a No Objection Certificate (NOC) for any project to be started. The main problem that the department is facing is that the communities are not ready to part away from their land as it becomes difficult for them to get a suitable land for houses and agriculture.

- Like in the other states the role of the Panchayatiraj department in ensuring that the provision of the PESA act are followed is minimal and limited to only occasional consultation and conducting awareness and training programmes for some officials.

*The districts of Banswara and Dungarpur were chosen for the field study, with two case studies from each district. Some of the key points that came out in the case studies are summarized below:*

- Lease most often is given on “Gauchar” land; traditionally part of the village common property, but now considered as government property. No alternate land is shown to the villagers for the purpose of grazing their animals. In most cases the villagers became aware of the mining only after it started. The gram sabha was not consulted when leases were given on such lands.
- Most of the villages are facing severe drought and agriculture is not able to provide enough to sustain the villagers. Hence mining is considered by a quite a few of the tribals as their only feasible livelihood option. Some of them are interested in taking up mining operations on their own and awaiting the end of the lease in their village.
- The management of the company owning the lease is almost invisible as they operate through “remote control”. They operate with a bare minimum staff and in some cases with just an accounts kind of person who deals more with the daily wage labourers and some minor shipment details. The company does not maintain records of those working in their mine sites. This is primarily so that the mining company can quickly disassociate themselves from the "handicapped" worker, lest they have to compensate them.
- After mining the village economy has changed and social evils like liquor and gambling have become rampant. Additionally, whatever little bit of land is available (or suitable) for agriculture is losing its fertility as the company is dumping marble dust

on the soil. Some of the villagers are facing severe health problems including respiratory problems, eye and skin diseases.

- Most villagers are not aware of PESA or its provisions, less so the women. Wherever awareness of PESA was higher the villagers were able to obtain some kind of funds for village infrastructure and also negotiate for a better deal from the company.
- None of the mining sites visited had any waste treatment process and all the waste from mine site was being dumped onto adjacent lands (which does not belong to the mine owner).
- Due to the pitiable conditions of living there is a lot of migration in the mining areas. The companies prefer to hire labour from outside the village and this influx brings with it various social problems (eve teasing, harassment of women, alcoholism etc). The older people do not find a place in such an economic system and are dependent on their younger family members. The women are the worst affected part of the population and they are working in the field or as housemaids.
- In cases where an NOC was obtained, the company asks for the NOC from the villagers and uses it to obtain the lease from the government. The whole process is done in a very sly manner with the company “convincing” some of the village members and village level officials who in turn help the company obtain the NOC. The “promises” or dreams sold during the process of obtaining the NOC are never fulfilled. Typically when an NOC is needed the government and company officials descend on the village and organize a feast for the villagers, where they make them “sign” on the “resolution”.

## **Orissa**

- Orissa has one of the largest concentrations of tribal population in the whole country with a number in excess of 70 lakhs. The rural population is 85% and most of them are dependent on agriculture. Orissa occupies a substantial portion of the mineral rich zone in India. Orissa is home to a large number of Central Projects with a substantial number of them being related to the mining sector.

- The current operating rules for minor minerals were formulated in 1990 and are called the Orissa Minor Mineral Concession Rules, 1990. The rules have not been modified to reflect the provisions of PESA. The amendments have been made in the state Panchayat acts. The state of Orissa has separate acts to govern the different tiers of the Panchayatiraj system viz., Orissa Zilla Parishad Act, 1991 (district level); Orissa Panchayat Samiti Act, 1959 (block level); Orissa Gram Panchayat Act, 1964 (village level)
- In addition to the above tiers, traditionally there is an additional tier in Orissa called the *Palli*. This is the smallest unit of decisions making in the traditional system and corresponds to the definition of Gram in the PESA Act. The state act has ignored this level and starts the process of self-determination and devolution of powers from Gram Panchayat.
- The state has issued instructions to the collectors and the special land acquisition officers asking them to submit proposals for acquisition of land in scheduled areas along with copies of resolution of concerned gram sabha/ Gram panchayat. An amendment has been made in the Orissa Zilla Parishad Act, 1997 which states that no prospecting licence or mining lease for minor minerals or concession for exploitation of minor minerals shall be granted without the prior recommendation of the Parishad. Thus the state has affectively diluted the spirit of the PESA act. The state has also decided to take an imaginative definition of the term “appropriate level” used in the PESA act. This appropriate level as per the state is the zilla parishad. Most officers of the state government vehemently support their amendments. They said "in case the central government wanted us to devolve the powers to the Palli sabha, they should have stated that". Similar arguments are put forth for the definition of appropriate level.

### ***Mining Lease Process***

- The mining related officers mentioned that for major minerals the process of awarding lease starts with prospective lease and then the mining lease is awarded. The applications for major mineral has to be submitted to the state level and for minor it has to be submitted at block level depending on the type of mineral and area on which the lease is being applied for. The normal process of awarding a lease as per the official

takes around two years. The Zilla Parishad is consulted prior to giving lease for minor minerals. The panchayats are allowed to participate in public hearing before awarding the lease. The revenue is shared between the center and state but not with village.

### ***Land Acquisition Process***

- The interested party has to approach the revenue department and the application in such case is scrutinized at the state level. On rehabilitation and resettlement there are no general guidelines, however separate guidelines exist for irrigation and mining projects in the state of Orissa. From time to time the state also issues GOs on rehabilitation and resettlement.
- On the role of various stakeholders, the officials mentioned that the company has to submit rehabilitation plan before land acquisition can begin. One of the field level officials mentioned that sometimes the biggest problem with the process of land acquisition is the lack of coordination between government officials & communities.
- The officials of the land acquisition department were aware of the PESA act. Most of them said that it did not have serious implications in the process of land acquisition.

*The districts of Sundergarh and Keonjhar were chosen for the field study, with two case studies from each district. Additionally a case study from the Kalahandi district has also been included as the land acquisition is taking place right now and the gram sabha is opposing the same. Some of the major observations related to the case study include:*

- Lack of land settlement robs the tribals of any compensation despite in some cases tilling the land for generations. Most land is hence considered as government property. The villagers traditionally have rights to the forests surrounding their villages. However, these rights are also not respected.
- Even where due process is followed, the lack of land settlement makes the whole thing a formality. In all cases the villagers have very little information about the project, extent, nature etc.
- The rehabilitation process is dealt with great insensitivity, with the villagers being forced to accept whatever they are given; else they do not get anything. The operations

of the company start even before rehabilitation is complete putting more pressure on the villagers to accept whatever it is they are getting.

- Dumping of mine waste on agricultural lands is quite common, thereby destroying whatever little productivity is left in the lands.
- The tribals are being driven to poverty as their economies are changing from agriculture based to market based systems, which they are not equipped to handle.
- In some places mining and quarry has started after the PESA act came into force, however the state amendment which gives the Zilla Parishad the right to be consulted is acting against the interest of the local villagers. The Zilla Parishad is controlled by the powerful political parties, which also have a hand in the quarry operations.
- In one place the mining companies have been using the land in scheduled areas for mining and ancillary activities without consulting the Gram Sabha/ Panchayat despite the government order.
- Despite all the safeguards including the state acts on tribal land alienation and the GO mentioned earlier, the rights of the villagers are being violated with impunity. Many of the Government orders have not reached the field units, like the government order relating to land acquisition in scheduled area.

### **Southern Orissa – Special case study**

- The protests of the tribals in the Rayagada against the mining company of Utkal Alumni International Limited have been going on for more than ten years. Sterlite another company interested in starting mining activities in the region figured that it would be very difficult in the present circumstances to acquire land in that region and hence is trying to acquire land in the Lanjigarh area. The Industrial Infrastructure Development Corporation, a state government enterprise, is acquiring the land in Turiguda village on behalf of Sterlite Industrial India Limited. There are a total of 12 villages, which will be affected by the mining activities. They fall in two different panchayats. The villagers did not receive any individual notices and got to know about the project when the collector called for a “gram sabha”. As per the Orissa act the gram sabha includes all the villagers in the panchayat, which in this case amounts to almost

5000 villagers. At the meeting none of the villagers from the 12 villages signed on the “resolution”, though the “gram sabha” itself seems to have approved the project.

- Some of the villagers received their individual notices after the “gram sabha” and the notices were dated 6<sup>th</sup> June, 2002. The villagers were expected to send in their written objections by the 22<sup>nd</sup> of June, 2002. The gram sabha was organized on the 26<sup>th</sup> of June 2002. The gram sabha held on 26<sup>th</sup> June, 2002 was attended by a large number of company officials, police force and the district administration. Thus the gram sabha was held with “adequate” show of the state power. Prior to the Gram sabha the collector moved in the area with a contingency of police force “urging” the tribals to pass the resolution.
- The tribals in the area are opposed to the project and have formed an organization to save their forests and resources - Niyamgiri Surakshya Abhiyan (NSA). They have decided to not cooperate with the survey work being undertaken by the forest and revenue officials. They invited the Revenue divisional Commissioner to their meetings, but he refused to attend. The villagers opined that the *Palli* sabha is the right body to make such decisions and not the “gram sabha”. The *Palli* sabha is the customary and traditional body of the tribals of that region. They felt that the villages who are not going to be affected (in terms of direct displacement) are the ones who have signed on the “gram sabha” resolution and none of the villagers of the 12 villages who are being affected have signed.
- The public hearing held on 17-3-2003 for the project was also attended by more than 700 tribals of the region but they were not allowed to voice their dissent. The company officials have booked false cases (“attempt to murder”) against the tribals as they were not allowing them to survey their lands. On April 1<sup>st</sup>, 2003 the company hired goons beat up a local activist and also drove away the villagers who had come to protest such violations of human rights.
- Most of the villagers are opposed to the project and despite the various acts (and provisions in them) the people did not seem to have a say in the process of land acquisition and mining. It also highlights the practical problem of how the definition of a gram sabha is being almost misused by the government officials to push through a

project which obviously the state government is backing against the interests of the tribals. The right of self determination is completely sidelined. The state modifications in the act have made the provisions impotent.

- In addition to the land acquisition process it is also clear that the villagers need more information about the project including environmental management plans, EIA etc., to arrive at a more informed decision. The district collector and the District Police superintendent have proclaimed that they those who oppose Sterlite are antisocial and also that they would get the project to the district before they leave the district. When senior officials have such a narrow focus it is hard to see how PESA can be affectively implemented.

## **Recommendations**

### ***Union Government***

- The Land Acquisition Act of 1894 and the Coal Bearing Areas (Acquisition and Development) Act, 1957 should be amended to reflect the provisions of PESA. Specifically prior to serving individual notices to the land holders, there should be a provision in the act to compulsorily consult the Gram Sabha. Given that a large amount of Schedule V area is prone to be used for this act, there is a strong case for a Separate Land Acquisition Act for the Schedule Areas, with the provisions of PESA dully reflected. PESA also provides for consultation in the case of Resettlement and Rehabilitation, which also needs to get reflected in the Land Acquisition Act (as also similar acts like the Coal Bearing Act).
- The LA act should also draw out guidelines for public purpose to make the definition more exhaustive, instead of being arbitrary. There is a definite conflict between the provision on public purpose and some of the provisions of the PESA act. This needs to be resolved. As stated in the Bhuria Committee report (1995) *“Both the laws (land acquisition and coal bearing areas act) and their implementation should have a positive bias in favour of tribals in the interest of equity and compensation for opportunities lost”*

- The LA act should also be amended to incorporate a rehabilitation and resettlement policy for all projects. Case by case R&R packages provide too much scope for manipulation. Additionally as suggested elsewhere, the rehabilitation should improve upon the earlier levels of living of the displaced tribes, particularly taking into consideration their communitarian ethos. Priority in any R&R package should be given to the landless and women headed households as they are worst affected due to any displacement.
- A clarification needs to be issued on when the gram sabha should be consulted, i.e., when land in the village boundary is to be acquired whether it is private or public land or traditional village forest lands.
- In the PESA act consent of the gram sabha should be made mandatory for major minerals also.
- The Mines and Minerals (Development and Regulation) Act, 1957 should be suitably modified to reflect the above provision

### *State Level*

- Pending any legislation from the Central Government on the Land Acquisition Act incorporating the PESA provisions, the State Governments with scheduled areas can utilize the flexibility provided in the constitution and through the Tribes Advisory Council (TAC) and Governor of the State, modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to acquisition of land in the Schedule V Areas.
- The states of Rajasthan and Orissa should be asked to modify their PRI acts to reflect the land acquisition provision as provided in the central act.
- Survey and settlement operations should be taken up in those areas where it has not been done to remove errors, confusion and vagueness. Existing land holding patterns including communal systems should be fully respected and no coercion should be brought to bear in this regard.
- Specific clarification to the Orissa state on what a gram sabha is and the need to consult the *Palli* Sabha and not the panchayat.

- In Orissa and Rajasthan the minor mineral concession rules should be modified to reflect the provision requiring consent of the gram sabha for lease. The good aspects of both the Madhya Pradesh and the Rajasthan Panchayat Raj act should be incorporated in the modifications. Specifically the provision should lay the onus on the mining department for obtaining the NOC and this should be done after the gram sabha has been provided with the map of the areas to be mined and the extent and the relevant information. The gram sabha needs to make an informed decision.
- Orissa and Rajasthan should incorporate provisions providing for a share of the royalty to go to the gram sabha, like in the case of Chattisgarh.
- All the state governments have made lofty pronouncements that they would encourage the marginalized sections of the society to take up small scale mining. This needs to be converted into reality. There should be a special emphasis in terms of action and for this purpose the mining department should work with the tribal welfare or PR department to work out the modalities of implementation. Like the MNCs, the tribal societies who come forward should also be provided with facility for single window clearance.

### *General*

- Most often it was found that the gram sabha having given the NOC (based on promises of the owner) realizes only too late that their lands, air and water are being polluted. There is a need to develop a mechanism whereby the mine owner is responsible to the villagers even after the NOC is given. This could be in the form of an agreement between the gram sabha and the mine owner laying down the ground rules for mining and binds the mine owner, at least to some extent. Alternatively, the NOC could be a conditional one, with clearly stated terms of using the land and penalties (which should accrue to the Government and Gram Sabha in equal proportion) to be levied in case of breach of contract by the lessee.
- There is a need to question the power of eminent domain of the state. While it cannot be argued that it should be done away with, a clearer definition and guidelines for

public purpose would help remove some of the arbitrariness present in the existing system.

- The lack of transparency in the process of land acquisition needs to be addressed. Even when the villagers are receiving the notices as required by law, they are not getting a clear picture of the project and exact details of the land being acquired. This process of land acquisition needs to be more sensitive to the communication needs of the tribals and ideally, the revenue department officials should visit the villages and explain the details of the project, areas to be acquired, process of land acquisition. The mere fact that the process is stated in the act does not imply that the tribals are aware of the process or for that even understand it. Most of the information they obtain at this stage is hearsay and can either raise their expectations or make them completely antagonistic. Too often the government departments are taking a position, which is already biased against the tribals and towards the company. A sensitization programme for the officials of the different departments (especially mining and revenue) to the needs of the tribals might be a useful step in this direction.
- Resettlement and rehabilitation should be completed prior to commencement of the project. The agreement that is entered into with the company by the government should emphasize this point to ensure that the company does not push for initiating their project even before the R&R is complete. The onus is on the government to undertake the R&R as they are already being paid by the company for this purpose. This arrangement needs to be studied to ensure that the inefficiency of the government does not hurt the tribals and indirectly the company also. One possibility would be to appoint a committee to oversee the R&R. This committee could consist of to be displaced villagers, government officials, prominent local people and the company officials. This would also ensure that there is more transparency.
- Land to land compensation should be mandatory for the tribals who are being displaced in the scheduled areas. In all such cases it should be ensured that the Women's name is also entered in the entitlement documents. In case land is not available (or even when it is given); some other arrangement whereby the tribals continue to retain their control on the resource should be explored. One possibility would be to give the lease in the

name of the tribal society, where the tribals have joint ownership of the resource. This would in line with the Schedule V as stated in the constitution whereby no tribal land can be leased or sold to non tribals. Various formulae, 20% of net profit, 50% of the shares, have been suggested in the past and these need to be explored by holding discussions with the tribal communities and a realistic and operationally transparent system needs to be evolved.

- Some of the State governments are utilizing the rural development programmes for compensating the tribals who are getting displaced and also want to use the funds meant for rural infrastructure to establish infrastructure for the mining companies. Such cross subsidy should be stopped. Compensation should be paid from the amount that the “acquiring party” is paying as part of its acquisition costs. It is an irony that mining projects have to be made feasible by utilizing the welfare funds meant for tribals.
- The Common Property Resources (CPRs) including *Gaucher* and Village Forests as well as water resources should not be acquired without providing alternative source of equal or higher value.
- Any land acquisition within the village boundary (irrespective of whether the land is government, village or private property) should require the consent of the gram sabha. This is important to ensure that the villagers have a say on what is happening in their surrounding environment. Most mining related activities cannot be just contained in the area acquired and the impact of the mining is also felt on the lands adjoining the acquired lands.

# **CHAPTER 1 – INTRODUCTION TO THE STUDY**

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## **1.1 BACKGROUND**

The Scheduled areas of India are home to a bulk of the mineral resources and forests<sup>2</sup>. The various mining and industrial projects that have come up in these areas have had serious implications for the tribal people. More than fifty percent of the persons displaced due to mines and mining projects have been tribals. Of the total displaced almost forty percent have been tribals. Almost eighty-six lakh<sup>3</sup> tribals have thus been displaced during the four decades from 1950 to 1990 (Table 1.1). Added to the above figures is the fact that almost three out of four of the displaced are yet to obtain proper rehabilitation and compensation.

*Table 1.1: An estimate of the total number of persons and tribals displaced (in lakhs) by the various development projects in India during 1951-1990<sup>4</sup>*

<b>Type of Project</b>	<b>All Displaced</b>	<b>%</b>	<b>Tribals</b>	<b>% of all displaced</b>
<b>Dams</b>	164.0	77	63.21	38.5
<b>Mines</b>	25.5	12	13.3	52.2
<b>Industries</b>	12.5	5.9	3.13	25
<b>Wildlife</b>	6.0	2.8	4.5	75
<b>Others</b>	5.0	2.3	1.25	25
<b>TOTAL</b>	213.0	100	85.39	40

The emphasis of the various five-year plans on industrial development and development of "basic" (mining) industries has obviously taken its toll on the tribals who were residing in the scheduled areas. This has often led to conflicts, in some parts, though in most cases the "juggernaut" of national interest has managed to keep the conflicts at bay. As most of the development of mining and industries was done through the public sector, there was some apparent logic in this "concept" of national interest. However, the economic policy being pursued for the last decade, clearly wants the public sector to withdraw from the mining industry and there is a thrust on encouraging the private sector. It is now far more incredulous to think in terms of national interest. Coupled with this is the fact that the

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<sup>2</sup> 80% of the forests and minerals are contained in the predominantly tribal belts of India, Planning Commission document

<sup>3</sup> A Planning Commission estimate puts the figure at 200 lakhs. Source: mid term appraisal of ninth plan

<sup>4</sup> Source: Tribals displaced: the price of development by Walter Fernandes, Indian Social Institute, Delhi

number of displaced and tribals almost driven to poverty due to mining has attained a critical mass and the abject failure of the government to "show" any development for the displaced tribals is there to be seen.

## **1.2 PESA**

In the above scenario and to encourage a more participatory nature of development where the tribals have more rights to self-determination, the Government of India on 24<sup>th</sup> December 1996 passed an act extending the provisions of Part IX of the Constitution, relating to the Panchayats, to the Scheduled Areas. This act is popularly called the Panchayatiraj Extension to Schedules Areas (PESA) Act. The stipulations relating to land acquisition and mineral exploitation (Box 1.1) in the scheduled areas call for a more participatory role of the tribals and an attempt has been made to ensure that the tribals are allowed to follow their customary rights and practices.

### ***Box 1.1: Stipulations from the PESA Act related to land acquisition and mining***

**Section 4 (i)** "The Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas"

**Section 4 (k)** "The Recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas"

**Section 4 (l)** "The prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for exploitation of minor minerals by auction"

While promulgating the act in December 1996, the central government gave a time period of one year for the states with Scheduled V areas to modify their respective state laws to reflect the above stipulations and carry forth the spirit engendered in the act and its provisions. While some of the State governments have made the relevant modifications, this has not been consistent, especially in the context of actual implementation. As mentioned by Mr. NC Saxena (then Secretary, Planning Commission) in an article titled Issues in Panchayats: "*The implementation of the law has been severely hampered by the reluctance of most state governments to make laws and rules that conform to the spirit of the law.*"

One of the basic purposes of the act was to empower the tribals and it was felt that the Panchayatiraj institutions would be the ideal tool for a more participatory nature of

development. As it is more than six years since the act was first put in place there is a need to understand the extent and level of implementation of the basic spirit of the provisions. Additionally given the inter relations between the mineral and land acquisition legislations and the PESA act, a lot of onus of change lies with the state governments and how proactive they are in utilizing the laws for the benefit of the tribals.

### ***1.3 OBJECTIVES OF THE STUDY***

In view of the above the present study has as its objectives to:

- Study the strengths and weaknesses of PESA empowering PRIs with regard to the acquisition of land for mining in scheduled areas and any contradiction/ conflicts that exist between PESA and the earlier Acts, Regulations and Rules on this subject
- Study the procedures followed in the acquisition of land in the background of PESA (with reference to PRIs)
- Study the procedures followed in awarding leases of major and minor minerals in the context of PESA
- Study the nature and extent of and causes/ reasons of violation of laws regarding land acquisition
- Study PRIs response to violation of land acquisition rules
- Examine the issue of acquisition of land for 'public purpose' Vs. 'protection of land rights of tribals'
- Suggest legislative, administrative and other measures for checking violation of rules and land rights of tribals

Samata (brief profile in Annexure 1) has been entrusted with the job of undertaking the study in the states of Orissa, Rajasthan and Chattisgarh.

### ***1.4 METHODOLOGY***

To fulfill the above objectives the following methodology was adopted:

- **Secondary research** on the various laws and acts governing land acquisition and awarding of mining leases in the three states and corresponding central acts and laws.

This included collecting and analyzing the various laws and acts and also in some cases copies of executive orders issued as part of implementing the provisions of the act.

- **Case studies:** At two sites in each district selected, detailed information was collected from the communities and wherever possible the companies also. These have been presented as case studies (Table 1.2). An additional case study was undertaken in Lanjigarh/ Kalahandi block, Orissa where land acquisition is going on in the scheduled area and the local gram sabha is opposing the acquisition. Given the paucity of information the original intention of limiting the case studies to Post PESA acquisitions was not possible (except the Lanjigarh case mentioned above). The case studies present an interesting perspective to the way the villagers are looking at the whole process of land acquisition and mining leases.

*Table 1.2: List of case studies*

S. no.	Village	Panchayat	Block	District	State
1	Palada, Umrai	Chaubiso ka Palada	Banswara	Banswara	Rajasthan
2	Ittala	Sagwa	Kushalgarh	Banswara	Rajasthan
3	Surata	Nayagaon	Dungarpur	Dungarpur	Rajasthan
4	Rohanwada	Waghderi	Dungarpur	Dungarpur	Rajasthan
5	Tekka Doda	Salle	Bhanupratapur	Kanker	Chattisgarh
6	Markatola	Markatola	Kanker	Kanker	Chattisgarh
7	Kudridih	Kamleshwar	Narmadapur	Sarguja	Chattisgarh
8	Parsa	Parsa	Ambikapur	Sarguja	Chattisgarh
9	Tikilipada	Sumura	Hemagiri	Sundergarh	Orissa
10	Denguda	Denguda	Koida	Sundergarh	Orissa
11	Uparjagar	Urumundu	Bansapal	Keonjhar	Orissa
12	Putulapani	Putulapani	Bansapal	Keonjhar	Orissa
13	Turiguda	Baithilima	Lanjigarh	Kalahandi	Orissa

- **Interviews with government officials:** In addition to the secondary research and collection of data from the communities the study team also held in depth discussions with the state government officials on the various issues related to PESA, land acquisition and mining leases. In this context the study team met the state and district level officials related to the Departments of Revenue (land acquisition), Mining, Panchayat Raj and Tribal Welfare (Table 1.3).

*Table 1.3: Officers met in the different departments*

<b>State</b>	<b>Revenue</b>	<b>Mining</b>	<b>Tribal</b>	<b>Panchayat Raj</b>
<b>Orissa</b>	7	3	1	4
<b>Rajasthan</b>	3	4	2	2
<b>Chattisgarh</b>	2	3	-	2
<b>Total</b>	12	10	3	8

### **1.5 SAMPLING PLAN**

The states of Rajasthan, Orissa and Chattisgarh were selected by NIRD for the study. In each state the Schedule V districts were considered as the universe of population. Within the universe, given the policy context of the study and the discussions held at the NIRD sponsored Workshop on 11<sup>th</sup>-12<sup>th</sup> April, 2002 we went in for purposive sampling. The criterion for selection of the district was:

- Area in the district under Schedule V
- Extent of mining in the district - to ensure that we do not end up selecting a district which does not have any mining even though it might have more area under Schedule V

Based on the above, the following districts were finally selected for the study:

- Rajasthan – districts of Banswara and Dungarpur
- Orissa- districts of Keonjhar and Sundergarh
- Chattisgarh – districts and Sarguja and Kanker

The selection of the districts went through much iteration, as the information was not as easily forthcoming from the state government officials as originally envisaged. Within each district all the mining leases granted for major minerals were to be studied and the process of land acquisition documented in each of the cases. This essentially includes perusal of the government records related to land acquisition and mining leases. However, as mentioned the state government officials were extremely reluctant to share the information on mining leases or even land acquisition, despite repeated visits and letters of authorization. The study team hence had to be satisfied with understanding the process through interviews, secondary research, documents which the government was ready to share and with data collected directly from the communities.

## **1.6 DATA COLLECTION SCHEDULES**

To achieve the above tasks we prepared the following information schedules:

1. State level formats for data collection including broad interview (discussion) schedule and format for collection of data from the various departments including Panchayatiraj, mines, revenue (land acquisition) and tribal welfare.
2. District level formats include an interview (discussion) schedule for meetings with officers from the district collectorate, revenue, mines and Panchayatiraj.
3. A detailed checklist of procedure to be followed for land acquisition.
4. Community level case study information format for collecting detailed information on the process of land acquisition as seen from the community's point of view.
5. Format for collection of information from the company officials
6. Instruction sheet detailing the sample and various people to be met and procedure of collection of information

*All the schedules are attached in Annexure 2*

## **1.7 REPORT OUTLINE**

The balance of the report has been broadly divided into the following chapters.

Chapter 2: Situational Analysis – a brief on the mining and land acquisition related legislations and policy

*The next three chapters present State wise reports narrating the findings from the primary data collection process including discussions with state government officials and other experts, status of the modifications in the subject specific laws as also the Panchayatiraj laws, different executive orders issued, community perception of land acquisition process presented as case studies.*

Chapter 3: Chattisgarh

Chapter 4: Rajasthan

Chapter 5: Orissa

*The last two chapters analyze the findings and provide some brief recommendations*

Chapter 6: Findings and Recommendations

Chapter 7: Summary of Recommendations

## **CHAPTER 2 – SITUATIONAL ANALYSIS**

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### **2.1 SITUATIONAL ANALYSIS - MINING**

#### **2.1.1 Mining Policy and Legislations**

The development and exploitation of minerals in India are the shared responsibility of the State and Central Government and the broad parameters are laid down in the constitution itself (Box 2.1).

**Box 2.1: Extracts of the Seventh schedule of the Constitution**

**List I - Union List**

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in Public interest

**List II - State List**

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

For the purpose of law, minerals in India are divided into major and minor minerals. This distinction is based primarily on strategic importance of the mineral and its nature of usage. A lease for mining a major mineral is given by the central government while that for a minor mineral by the state government. Even within the state government depending on the size and area of the lease there are different levels of officers who have been given the power to award a lease. Different types of leases and permits have been defined in the acts and more recently, there have been some modifications aimed at encouraging multi national and large-scale mining companies (for example, Reconnaissance Permits for areas upto 10,000 square kms). Broadly speaking there are two types of concessions - lease and permit. While a lease is for a fixed duration, a permit places a restriction on both the time and quantity of mineral to be extracted.

The Mines and Minerals (Development and Regulation) Act, 1957 (henceforth referred to as MMDR Act, 1957) lays down the legal framework for the regulation of the mines and development of all minerals<sup>5</sup>. Under this act the Mineral Concession Rules (1960) have been framed for regulating grant of prospecting licences and mining leases in respect of all minerals<sup>6</sup>.

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<sup>5</sup> other than petroleum and natural gas

<sup>6</sup> other than atomic and minor minerals

### **2.1.2 Minor Minerals and State Purview**

With regards to minor minerals, Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 empowers the state governments to make rules for regulating the grant of quarry leases, mining leases, or other mineral concessions in respect of minor minerals (Box 2.2 for definition of minor minerals).

#### ***Box 2.2: Definition of the term minor mineral***

The term "minor mineral" has been defined in clause (e) of Section 3 of the MMDR Act, 1957 which states: "(e) minor minerals means building stone, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official gazette, declare to be a minor mineral;"

Apart from the above the central government has also listed the following minerals as "minor": (1) Boulder (2) shingle (3) chalcedony pebbles used for ball mill purposes only, (4) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (5) murrum (6) brick earth (7) fuller's earth (8) bentonite (9) road metal (10) reh-matti (11) slate and shale when used for building material (12) marble (13) stone used for making household utensils (14) quartzite and sandstone when used for purposes of building or making road metal and household utensils, and (15) saltpetre

Additionally, the Central Government has clarified the term "ordinary sand" used in Clause (e) of Section 3 stated above. This is done in rule 70 of the Mineral Concession Rules, 1960 (MCR, 1960), which states that: "Sand shall not be treated as a minor mineral when used for any of the following purpose, namely: (i) purposes of refractory and manufacture of ceramic; (ii) metallurgical purposes; (iii) optical purposes; (iv) purposes of stowing in coal mines; (v) for manufacture of silvitrete cement; (vi) for manufacture of sodium silicate; (vii) for manufacture of pottery and glass"

The state governments are expected to make rules on the following aspects (amongst other things)

- Manner of which application should be made and fees to be charged,
- Terms and conditions for the lease,
- Procedure of obtaining quarry lease,
- Mining lease or other concessions,
- Various rents and royalties to be charged,
- Manner of protection of third party who might get affected by the mining operations,
- Manner of rehabilitation of flora and vegetation,
- Conditions for transfer of lease etc

The state governments based on their local situation and conveniences have formulated the mineral concession rules while covering the above points. These are discussed more in detail in the state specific chapters.

### 2.1.3 National Mineral Policy of India - 1993

The National Mineral Policy of India (1993) has evolved in the above broad context taking into account the economic reforms and the emphasis on private sector involvement in mining. While keeping this economic thinking in mind, the policy also acknowledges that most often minerals are found in the scheduled areas (Box 2.3). The policy acknowledges the lack of "adequate contribution to economic development" of the tribals due to mining activities in their region. It spells out a need to focus on involving them as part of the development of projects in the scheduled areas, even going to the extent of saying that they should be given preference in the case of small deposits. However, beyond being policy statements there are no concrete vehicles for transforming this policy into action.

*Box 2.3: Extracts from the National Mineral Policy (1993) relevant to the tribals (emphasis added)*

#### **7.10 Infrastructural Facilities and Regional Development**

Mineral Deposits generally occur in remote and backward areas with poor infrastructural facilities which often inhibit their optimal development. ***Mineral bearing areas are also often inhabited by tribal population and exploitation of mineral resources has not always contributed adequately to their economic development.*** Contribution of mineral development to overall regional development has not always been commensurate with the huge investment in large mining projects. A major thrust needs to be given for development of infrastructural facilities in mineral bearing areas following an integrated approach for mineral development, regional development and also social and economic Upliftment of the local population including tribal population.

#### **7.12 Small Deposits**

Small and isolated deposits of minerals are scattered all over the country. These often lend themselves to economic exploitation through small scale mining. With modest demand on capital expenditure and short lead time, they also provide employment opportunities for the local population. Efforts will be made to promote small scale mining of small deposits in a scientific and efficient manner while safeguarding vital environmental and ecological imperatives. In grant of mineral concessions for small deposits in Scheduled Areas, preference shall be given to the scheduled tribes.

### 2.1.4 Mining Leases - Status

The states of Orissa, Madhya Pradesh and Rajasthan constitute 37% of the total leases executed or granted but in terms of actual area covered under the lease they account for almost 50% of the total area given under mining lease in the country (Table 2.1). As the table dates to a time prior to the division of the states, Chattisgarh is seen as part of the MP in it. It is estimated that almost 50% of the mining operations in erstwhile MP was located in what is today the state of Chattisgarh.

**Table 2.1: Mining Leases as on 31-3-1999 (by Principal States)<sup>7</sup>**

State	No. of mining leases executed/ granted	Percentage to total leases	Area ('000 hectare)	Percentage to total area
<b>All States</b>	8871	100	673	100
<b>Andhra Pradesh</b>	1362	15	49	7
<b>Bihar</b>	431	5	48	7
<b>Goa</b>	402	5	31	5
<b>Gujarat</b>	1410	16	31	5
<b>Karnataka</b>	548	6	70	10
<b>Madhya Pradesh</b>	1305	15	68	10
<b>Orissa</b>	620	7	105	16
<b>Rajasthan</b>	1350	15	158	23
<b>Tamil Nadu</b>	628	7	44	7
<b>Others</b>	815	9	69	10

### **2.1.5 PESA and Mining Legislation**

The PESA Act provide for a mandatory recommendation of the gram sabha prior to giving lease (or concession) for a minor mineral. As minor minerals are under the purview of the State government, they formulate the rules as required and these have been discussed in detail in the state specific chapters.

## **2.2 SITUATIONAL ANALYSIS – LAND ACQUISITION**

### **2.2.1 Land Acquisition Act, 1894**

The Land Acquisition Act of 1894 is the basis on which the government acquires any private land. The act also prescribes the procedure for acquiring property (Box 2.4).

This act was inherited from the colonial rulers, who obviously viewed land in a very different context. The act itself was based on the theory of eminent domain, that the State is sovereign and it has supremacy over all natural resources and is also best placed to “protect” or exploit the same. Thus, the State can compulsorily acquire any property, including private by the process of law. This is a central act and is applicable to all the

<sup>7</sup> Source: Indian Mineral at a Glance, 1998-99 and 1999-2000, Indian Bureau of Mines, Nagpur. The data pertains only to major minerals data which is collated at the IBM

states though they are allowed to make changes (amendments) as long as such changes are not opposed to the provisions as they stand in the act. There are regional variations with regards to matters such as who can set the process of acquisition in motion, manner of notices to be sent, persons on whom notices must be served etc. As per the constitution of India, the states having scheduled V areas are allowed to make changes in the act (or any other act for that matter), through a public notification by the Governor after consultation with the Tribes Advisory Council of the State and these regulations take effect after sanction of the President. In addition to the LA Act, 1894, the Coal Bearing Areas (Acquisition and Development) act, 1957 also permits the central government to acquire land for coal mining purpose. The coal bearing areas act gives more powers to the State and it is administered directly by the Central government by appointing a competent authority. Most of the rules and procedures are similar to the land acquisition act of 1894.

**Box 2.4: Procedure for Land Acquisition – Land Acquisition Act, 1894**

<p><b>Stage I</b></p> <ul style="list-style-type: none"> <li>• Publication of preliminary notification by the government that land in a particular locality is needed or may be needed for a public purpose or for a company. <i>Section 4(1)</i></li> <li>• Entry of authorized officers on such land for the purpose of survey and ascertaining whether it is suitable for the purpose in view. <i>Section 4(2)</i></li> <li>• Filing of objections to the acquisition by persons interested and enquiry by Collector. <i>Section 5-A</i></li> </ul> <p><b>Stage II</b></p> <ul style="list-style-type: none"> <li>• Declaration of intended acquisition by Government. <i>Section 6(1)</i></li> <li>• Publication of declaration as required by the Act. <i>Section 6(2)</i></li> <li>• Collector to take order from the government for acquisition and land to be marked out, measured and planned. <i>Sections 7 &amp; 8</i></li> </ul> <p><b>Stage III</b></p> <ul style="list-style-type: none"> <li>• Public notice and individual notices to persons interested to file their claims for compensation. <i>Section 9</i></li> <li>• Enquiry into claims by Collector. <i>Section 11</i></li> <li>• Award of collector. <i>Section 11-15</i></li> <li>• Reference to Court. <i>Section 18-28</i></li> </ul> <p><b>Stage IV</b></p> <ul style="list-style-type: none"> <li>• Taking possession of the land by the collector. <i>Section 16</i></li> <li>• Payment of compensation. <i>Section 31-34</i></li> </ul>
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**2.2.2 Land Acquisition Act - Amendments in 1984**

As mentioned the intentions of the colonial rulers behind the act were different. Despite this the act was amended only after 37 years of independence (i.e., 1984). Other than bringing into its fold the states of Rajasthan, Kerala and Nagaland, which till then had self-

contained land acquisition acts, the 1984 amendment was made primarily with a view to streamline the process of land acquisition. The following important amendments were made related to the process of acquisition:

- A time limit was set down for the completion of all formalities between the issue of preliminary notices under section 4(1) and the issues of the declaration of acquisition under section 6(1). This time limit has been fixed as one year.
- Time limit within which the collector must make an award as in section 11-A. this time limit is fixed as two years from the date of publication of the declaration under section 6(1).
- Payment of compensation with interest at 12% per annum, commencing from the date of Notice under section 4(1) to the date of the Collector's award under section 23(1-A)
- Enhancement of the payment of solatium (i.e., compensation for loss, suffering or injured feelings) from 15% to 30% of the market value of the acquired land
- Land acquisition for Private Companies brought into the ambit of the Act: This is probably the most drastic amendment (especially with regards to mining) to the Act, which allows the private companies to approach the Government to acquire land for setting up their industries and related enterprises and services.

While some of the above changes can prove beneficial to the displaced as they minimize undue delay and also provide for compensation at a higher rate, another clause included under Section 17 confers more discretionary powers on the government for acquiring land. An urgency clause has been introduced in this section which gives the Collector the powers the right to acquire land after 15 days of publication of the notice under Section 9(1).

The amended act allows for treating acquisition for Government Company or government controlled corporation including 51% (government controlled) joint ventures as public purpose. This obviously simplifies the process of acquisition for such companies and corporations. Typically, the procedure for acquiring land for a company is the same as when acquiring land for a public purpose, however no steps can be taken unless the company has obtained the previous consent of the government and the company has

executed an agreement as under section 39. This agreement is on the following matters (and should be published in the official gazette):

- Payment to the government of the cost of acquisition
- Transfer of the land to the company on payment of such cost
- Terms under which the land will be held by the company

### ***2.2.3 Public Purpose***

One of the most contentious issues has been that of "public purpose" and the state government through its district administration has almost discretionary powers in this regard. The act does not provide any exhaustive definition of "public purpose" and merely gives examples of the kind of things, which can be considered as public purpose including:

- Provision of village sites, or the extension, planned development or improvement of existing village sites;
- The provision of land for town or rural planning;
- The provision of land for planned development of land from public funds in pursuance of any scheme or policy of government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- The provision of land for a corporation owned or controlled by the state;
- The provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason or the implementation of any scheme undertaken by government, any local authority or corporation owned or controlled by the state;
- The provision of land for carrying out any educational housing, health or slum clearance scheme sponsored by government or by any authority established by government for carrying out any such scheme, or, with the prior approval of the appropriate government, by a local authority, or a society registered under the societies registration act, 1860, or under any corresponding law for the time being in force in a state, or a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in the state;

- The provision of land for any other scheme of development sponsored by government, or, with the prior approval of the appropriate government, by a local authority;
- The provision of any premises or building for locating a public office,

But does not include acquisition of land for companies.

#### **2.2.4 PESA and Land Acquisition Legislation**

The provisions in the PESA act related to land acquisition provide for a consultation with the gram sabha prior to acquisition of land. Land acquisition Act being a central Act the onus is on the Central government to make the relevant modifications. However, in 1998, the Ministry of Rural Development issued executive instructions to all the chief secretaries describing the modalities of consultation with the Gram Sabhas and detailing the procedure for land acquisition in schedule five areas (Box 2.5). The ministry was also actively planning to suitably amend the Land Acquisition Act of 1894 by incorporating a sub section on the PESA Act.

##### ***Box 2.5: Summary of executive instructions issued on land acquisition in light of PESA***

All the land acquisition proposals for acquiring land in the Schedule V areas should include:

- Gram panchayat wise schedule of land proposed to be acquired
- A separate letter of consent from each of the gram panchayat in favour of the proposed acquisition. This should be in the form of a written resolution of the gram sabha.
- In case a gram sabha expresses a disagreement, a copy of the resolution showing the reasons for disagreement including alternative suggestions if any made by the gram sabha

The district collector has to examine the letter of consent and continues to hold the right to overrule the dissent of the gram sabha, but is expected to follow procedure providing for a tripartite meeting with the villagers, government and interested party. In case even after this the issue is not resolved the collector can proceed with the acquisition as provided under the land acquisition Act.

The instructions also detail the responsibilities of the state government for coordination and monitoring of land acquisition and rehabilitation and resettlement schemes in the Schedule five areas. These instructions require the government to maintain a register showing year wise quantum of land acquired in the schedule V areas and the formation of an Inter-Ministerial Coordination Committee for monitoring. This committee may publish a district wise land acquired for public purpose.

## ***CHAPTER 3 - CHATTISGARH***

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### ***3.1 PROFILE***

The state of Chattisgarh was formed on November 1st, 2000. With an area equivalent to 4.14% of the total area in India, it is a state rich in mineral and forest wealth. Twelve percent of India's forests are in Chattisgarh, and forty-four percent of the state's land is under forests. Chattisgarh has a population of 2.07 crores (2001 census). One third of Chattisgarh population is of tribes, of whom around 98% live in the rural areas. The Gonds at 55.1 % form the largest proportion within the tribal population. Forty eight percent of all inhabited villages have more than half their population belonging to the tribal groups and thirty percent of all inhabited villages have more than three-fourths population from the scheduled tribes.

Administratively the state is divided into 3 Revenue Divisions with 16 revenue districts. Of the total 146 development blocks in the state 85 are tribal development blocks. The state is following a three-tier system of panchayats and 16 district (zilla) panchayats, 146 block (janpadh) panchayats and 9129 village (gram) panchayats have been established and elections held for the same.

### ***3.2 MINERALS AND MINING INDUSTRIES***

Chattisgarh is one of the richest states in terms of mineral wealth, as the following facts testify:

- Chattisgarh contributed fourteen percent (Rs. 3950 crores) of the total value of mineral production in India in 2000-2001
- Chattisgarh, along with two other Indian States has almost all the coal deposits in India
- All the tin ore in India is in Chattisgarh
- A fifth of iron ore in the country is here
- Approximately 20% of steel and 10% of cement in the country comes from the state

Chattisgarh has 28 varieties of major minerals and presently there are 11 main types of minerals being produced in Chattisgarh, including coal, bauxite, limestone, dolomite and iron ore (Table 3.1).

*Table 3.1: Production and reserves of some key minerals in Chattisgarh (1999-2000)<sup>8</sup>*

Mineral	Deposits (in Million tonnes)	% of Country Deposits	Production (in lakh tonnes)	% of Country production	Rank in Country	District
Coal	12603	6.15 %	447.23	14.41 %	Second	Korba, Koriya, Sarguja, Raigarh
Iron Ore	1969	19.58%	184.90	25.17 %	First	Dantewada, Durg
Tin		99.95%	22812 kgs	Almost 100%	First	Bastar
Bauxite	96	3.90 %	4.38	6.38%	Sixth	Sarguja, Kanker, Korba
Limestone	3581	4.73%	121.06	9.47%	Fifth	Raipur, Janjgir, Durg, Raigarh
Dolomite	606	13.81%	6.73	23.41%	Second	Bilaspur, Durg

Some of the prominent companies established in Chattisgarh are - Bhilai Steel Plant (Iron ore), South-Eastern Coal field Limited (coal), Bharat Aluminium Company (Bauxite). There are also a large number of cement plants including ACC, Gujarat Ambuja, Grasim, L&T, CCI and La Farge of France. There are 9 major cement plants with production capacity of approximately 11 Million tones and investments of more than Rs. 21.86 billion. In addition to that they are 6 Major Sponge Iron Units with total investment of more than Rs.11.2 billion having a production capacity of more than 1.3 Million tonnes.

### **3.3 MINERAL LEGISLATION AND PESA**

The state of Chattisgarh after its formation continued to use the various laws and legislations applicable when it was part of Madhya Pradesh. Hence the mineral rules and regulations applicable prior to 2000 were in force afterwards also. The present analysis is based on the MP acts and legislations, taking into account some modifications made by the Government of Chattisgarh.

<sup>8</sup> Report of the Department of Mineral Resources, Government of Chattisgarh, 2000-2001 - hindi document

As per the Madhya Pradesh Minor Mineral Rules, 1996 there are primarily two types of mineral concessions – quarry lease (akin to a mining lease) and quarry permit. The salient features of these rules include:

### **Quarry Lease**

- Quarry leases are sanctioned by the State Government, Director (Geology & Mining) or the collectors depending upon the mineral and extent of area applied for. Quarries of certain minerals are auctioned by the Sub-Divisional officers of the concerned sub divisions.
- Applications for quarry leases and renewal have to be made, through the mining officer or assistant mining officer, to the collector of the district in which the area falls. The application is to be made in a prescribed form along with the requisite fees and documentary proof's required. In case an application is not disposed of within one year the lease is **deemed to have been refused**.
- There is a provision that no quarry lease is sanctioned without obtaining **opinion** of the respective Gram Panchayat.
- Quarry leases are granted for a period ranging from 2-20 years and a quarry permit 2-3 years. The maximum area (combined across the state) for an individual is 4 hectares and for companies/ societies/ cooperatives is 10 hectares.

### **Quarry Permits**

- The application for grant of a permit is to be made to the concerned Zilla/Janpadh/Gram Panchayat, with similar details as required in the case of a quarry lease. The application has to be disposed of within 60 days from date of receipt.
- Quarry permit is issued by the Zilla/Janpadh/Gram Panchayat only to the residents of the Panchayat where the quarry is located.
- The Gram Panchayat has to obtain prior approval of its Gram Sabha before final disposal of application for the permit

### Other provisions

- Quarries of certain Minor Minerals whose annual income is up to Rs. Ten lakh have been handed over to the Panchayat. All power regarding these quarries have been given to the Panchayat.
- Revenue from all Minor Minerals is now given to the concerned Panchayat for developmental work (Table 3.2).

*Table 3.2: Revenue sharing for minor minerals - Chattisgarh<sup>9</sup>*

<i>Lease upto cost of</i>	<i>% share of royalty</i>	<i>Level</i>
Rs. 2,50,000	100%	Village
Rs. 2,50,000	33%	Village
	33%	Jan panchayat
	33%	Zilla panchayat
Rs. 5,00,000 to 10,00,000	33%	Village
	33%	Jan Panchayat
	33%	Zilla Panchayat

- Preference to the members of Scheduled Tribe, Scheduled Caste, Other Backward Classes and ladies and their societies in sanctioning quarry leases of minor minerals.
- Gram Sabhas are now empowered to check illegal mining and theft of royalty.
- Hereditary kumhars, members of Scheduled Tribe and Caste and their societies are exempted in Minor Mineral Rules, 1996 for extracting clay and sand for manufacturing tiles, pots and bricks by traditional method.

The above provisions aim at strengthening the rights of the Gram Sabha to monitor and be part of the process of decision making in mining development. Most of these modifications were made as part of the efforts of the Madhya Pradesh government to empower the Gram Sabhas and devolve power to the people.

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<sup>9</sup> MP Minor Mineral Concession rules 1996, Section 56

### **3.4 MINERAL POLICY**

While the above is what the Chattisgarh state inherited from the MP state, the state itself has identified mining as one of its focus areas for inviting investments into the region. In line with this it came out with its Mineral Policy in 2001, with an aim to harness the State's mineral wealth potential and achieve the target of doubling the contribution of minerals to the State Domestic Products as envisaged in its Vision 2010 statement.

The state seems to have decided that mining should be encouraged at all costs. In the introduction to the Mineral Policy document there is reference to the need for mineral exploitation as opposed to preserving the environment and forests. It states

*“The basic purpose of its (Chattisgarh’s) formation would be defeated if the natural resources are not used due to constraints of stringent forest laws and environment problems... the stringent self serving policies are detrimental to facilitate financial investment.”*

The policy also states that the Chattisgarh will formulate its own rules for minor mineral concession, which will simplify the mining lease process and renewal process. The obvious implication is that some of the powers of the Gram Sabhas will be “modified” to suit the needs of the mining industry. Further the policy goes on to state

*“As the policy of leasing and royalty collections of minor minerals by the Panchayats has failed to increase the mineral revenues the powers will be vested with the Collector, who will auction the minor minerals and deposit the revenue accrued to the Panchayat for development”*

While the above statements have been made in the policy document (which is primarily targeted at the mining industry), the Department of Mines issued an executive order (GO number 315/ mining/2001 - Annexure 3) in December 2001, stating that lease applications for minerals available in lands of scheduled tribes in scheduled areas of the state should be sent to the State Government. The state government as per instructions of the Supreme Court in the Samatha Vs. State of AP and others case would present these applications to a cabinet secretaries level committee, which will be sanctioning authority in this regard.

These orders addressed to the District Collector of Korba, were also issued to all the district collectors. However, the procedure of granting leases on other lands (other than individual tribals land in scheduled areas) remained the same. It appears that the executive orders were issued primarily in view of the BALCO case, which was being fought in the Supreme Court at that time.

### 3.5 LAND ACQUISITION

With regards to the modifications reflecting the PESA act in the Land Acquisition act, it is stated in the government documents that as it is a central act the modification in the rules have to be made by the Central Government. However, the Tribes Advisory Council has approved the provision for consulting the Gram Sabha before the acquisition of land.

The Madhya Pradesh State promulgated an act titled “Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punsthapan) Adiniyam, 1985” which provides for the resettlement of certain persons displaced from lands which are acquired for irrigation projects, power projects or public utility projects. The term public utility project encompasses almost all types of “projects” and the act goes on to state “any work of public utility the construction, extension, improvement or development of which results in displacing persons from lands which may be used for such work.” The act goes on to define two “zones” affected and benefited with even some provisions that the persons from the affected zones should be resettled in the benefited zone. It goes onto detail how the land can be acquired in the benefited zone for the resettlement of the displaced persons. Most of these provisions are useful when one talks of irrigation projects, mining projects have only affected zones and the concept of benefited zone is almost impossible to define.

### 3.6 STATE RESPONSE TO PESA

*Box 3.1: Provisions of PESA (Act 40 of 1996) and state response - Chattisgarh*

Subject	Central Provision	Chattisgarh (Madhya Pradesh) Response
Land Acquisition	Gram Sabha or the Panchayat at the appropriate level shall be consulted	<ul style="list-style-type: none"> <li>The Tribes Advisory Council has approved provision for consulting gram sabha prior to land acquisition.</li> <li><i>As it is a central Act (Land Acquisition) an amendment has to be made under Sub Clause (1) of Clause 5 of the Fifth Schedule through notification to that effect by the Governor making consultation with the Gram Sabha mandatory prior to land acquisition. Similar changes are needed in the Coal Bearing Act</i></li> </ul>

<b>Subject</b>	<b>Central Provision</b>	<b>Chattisgarh (Madhya Pradesh) Response</b>
Grant of prospecting licence or mining lease for minor mineral	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	<ul style="list-style-type: none"> <li>• No mention in the State Panchayatiraj act but relevant subject act Mines and Minerals (Development and Regulation) Act, 1957 amended to assign powers to gram sabha and panchayats at the appropriate level</li> <li>• The minor mineral concession rules also have been modified to ensure that no lease is given without obtaining the opinion of the gram panchayat. Authority to grant short term permits transferred to PRIs at different levels.</li> <li>• In addition all leases on tribal lands in scheduled areas have to processed through a cabinet secretaries level committee, which is the sanctioning authority</li> </ul>
Grant of concession for exploitation of minor mineral	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	

### **3.7 OFFICIAL RESPONSE**

A total of seven officers belonging to the Revenue, Panchayatiraj and Mining departments were met at the state and district level. The attempt in the present study is to understand the procedure followed for land acquisition and mining leases and how the PESA act has modified the procedure.

#### **3.7.1 Mining Related Officers**

##### **3.7.1.1 Process**

The officers mentioned that for major minerals the lease is awarded as per the Central Act and Rules, and for the minor minerals the state act is followed. The mining lease applicant has to make the application at the district level irrespective of the mineral (major or minor). For minor minerals the district level units are empowered to make the decisions. For major minerals, the approval has to come from the central government.

The Tehsildar, mining inspector, forest department and Sarpanch have to give a No Objection Certificate (NOC) if the land that is to be mined comes under their purview. They are required to provide a NOC within thirty days. The Gram Sabha is consulted for obtaining the NOC for all prospecting and mining leases irrespective of the mineral being mined. There is no specified time limit in getting a NOC from the Gram Sabha. The onus is on the lease applicant to obtain the NOC from the Gram Sabha. If the Gram Sabha does not give an NOC, the lease would not be awarded. However, it was not clear how the officers who scrutinize the applications make sure that the Gram Sabha was actually held.

In addition to the above rules for awarding a mining lease if the land on which lease is requested belongs to the Government, non-tribals or the panchayat the collector is authorized to take the decision to award the lease. The officers mentioned that they were following the executive orders issued in December 2001 (annexure 3) for lease requested on land belonging to the tribals. On giving the lease a lease agreement is entered into with the lessee. Prospective lease are given for a two year period and there is a sanction agreement. Once the lease is given the district level mining officer deals with the company including compliances of the various reporting requirements and also the monitoring of the mining activities.

#### *3.7.1.2 PESA*

The officers were aware of the fact that Chattisgarh had adopted the MP State Panchayatiraj act, though they were not aware of all its provisions. They said that the state mining rules had already taken into consideration the provisions of the PESA Act. They did not feel there were any major changes in the lease process due to the PESA Act. As mentioned the applicant is responsible for obtaining the requisite No Objection Certificate from the Gram Sabha. It appeared that the officers were considering the process of consultation with the Gram Sabha as a mere formality. They added that the rules related to NOC were applicable all over the state and not only in the scheduled areas.

A suggestion put forth by one of the officers was to treat tribals as shareholders as they are the owners of land and should get priority and weight age when it comes to awarding leases. While this is mentioned in the rules and also in the policy statements of the state, there are very few avenues available to realize these pronouncements. The government has specifically stated that the weaker sections of the society would be given priority in leases, but the reality is that those who apply are discouraged (*refer- Case study of Markatola*).

### ***3.7.2 Land Acquisition Related Officers***

#### *3.7.2.1 Process*

The officers mentioned that the procedure of land acquisition is as per the Land Acquisition act, 1894 of the Central government. The applications for acquiring land are made directly to the revenue department at the district level. On their understanding of Public Purpose one of the officers mentioned that anything, which serves the larger interest

of the community like schools, hospitals, road etc, could be considered as public purpose. The state government has not issued any specific guidelines on Public Purpose and the district level units decide the context in which public purpose is to be applied.

In case the project is abandoned after the land acquisition is over it is either renewed or the land goes back to the government, but in no circumstances is the land returned to the original inhabitants. In case compensation or rehabilitation is required, the government pays only when the acquisition is for its own purpose, when the acquisition is done on behalf of a private party (company) it has to pay the government first and then the government distributes it to the people (community).

#### *3.7.2.2 PESA*

The officers were aware of PESA and they mentioned that the Gram Sabha is “consulted” in the process of land acquisition. Ordinarily the Gram Sabhas are expected to meet 4 times in a year, but the district collector has special powers to call for a gram Sabha in case of necessity or emergency.

#### *3.7.3 Panchayatiraj Officials*

One of the officers stated the MP Panchayat Raj Act has already taken care of a lot of the requirements of PESA and Chattisgarh is following the MP act. The officers felt that the implications of the PESA act are not much on the acquisition of land except that now the gram sabha has to be consulted prior to acquisition. They said that the villagers are involved in the process of the land acquisition and the mining lease process only for obtaining the NOC.

In response to the query on changes in the "subject" laws, the officers did not have knowledge of any changes and did not see any role for them to play in bringing about any changes. The department is also not involved in the process of land acquisition or the lease process and their role is limited to occasional consultation.

Speaking further on the Panchayatiraj and their activities the officers mentioned that the Panchayat elections took place two years back in Chattisgarh and the Gram Sabha is

organized four times a year. The department is helping in constituting the Gram Sabhas, explaining the powers and works that they can undertake. Some of the officers felt that powers have not devolved to the Gram Sabhas in the spirit in which the original act was promulgated and the Gram Sabhas and Panchayats are not able to utilize the various provisions of the act to the fullest. Some of them are also facing the problem of maintaining the required quorum of 1/3<sup>rd</sup> in the gram Sabha meeting.

### **3.8 COMMUNITY RESPONSE**

The districts of Kanker and Sarguja were chosen for the field study, with two case studies from each district.

#### **3.8.1 Background of Districts Selected**

##### **3.8.1.1 Kanker**

The District is situated in the southern region of Chattisgarh. The district was carved out of the Bastar district in 1999. The total area of the district is 5285.01 square kilometers and it has 6 tehsils and 7 blocks. The total number of villages is 1074 and the number of Gram Panchayats is 362. The literacy percentage in the district is 74.71% and the total population of the district is 6.5 lakhs. In addition to the iron ore found in the region, deposits of quartzite and garnet have been also identified in southern region of Kanker district. About 1000 lakh tonnes of iron ore deposits have been verified in the Bhanupratapur tehsil itself. In Markatola of Kanker district silimanite/ kainite (used as anti temperature agents) deposits have been identified. The two tehsils from which the present case studies have been drawn are Bhanupratapur and Kanker (Table 3.3).

**Table 3.3: Basic statistics of Kanker and Bhanupratapur**

<b>Tehsil</b>	<b>No. of Villages</b>	<b>Total</b>	<b>Literacy</b>
<b>Kanker</b>	100	76667	78.27 %
<b>Bhanupratapur</b>	261	137192	74.30 %

##### **3.8.1.2 Sarguja**

Sarguja, one of the northern districts of Chattisgarh is spread over an area of 16,034 sq. kms of which 53.23% is under forests. It consists of 19 janpadh panchayats, 977 gram

panchayats and 1773 villages.<sup>10</sup> All the 19 administrative blocks in the district are Adivasi blocks. The total population of the district is 19.7 lakhs of which almost 57% are tribals. The district is also rich in minerals and supports a few mineral based industries (Table 3.4).

*Table 3.4: Mineral reserves in Sarguja<sup>11</sup>*

Name of the mineral	Quantity (in lakh tons)	Area of the deposit	Current utilization	Possible industrial consumption
<b>Bauxite</b>	670	Manpaat, Jamikhar, Jonka Lunchupar	Fulfils the raw material needed for Sterlite Ltd. (formerly BALCO)	Aluminium Plant
<b>Coal</b>	6590.63	Bishrampur, Sonhat, Jilmili, Ramkela, Tatapani, Lakhanpur	Mining by SECL	Thermal Power Plant, Low Temperature Coal Carbonisation
<b>Graphite</b>	2410 ton	-	-	At a small scale making battery plates and in pencil industries
<b>Radioactive</b>	-	-	-	Department of Nuclear Energy, Government of India
<b>Limestone</b>	120	-	-	Minor Cement Plant

### 3.8.2 Case Study of Village Tekka Dodda

Village: Tekka Dodda  
Tehsil: Bhanupratapur

Panchayat: Salle  
District: Kanker

#### 3.8.2.1 Background

The population of Tekka Dodda is around 683 (1991 census), with the main tribal group being the *Gonds*. The village has both patta land and also some forest land, with most of the tribals having 2 acres of holding. Paddy is the main crop grown by the villagers. The village has very little irrigation facilities. The forests provide the tribals with income in terms of mahua, tendu etc, though this is reducing over time. In terms of common property lands the village has some water bodies.

<sup>10</sup> Source: Directorate of Economics and Statistics, Government of Chhattisgarh, Raipur.

<sup>11</sup> From the document published on the Chhattisgarh formation day by M.P. General Administration and Public Relations Department.

### *3.8.2.2 Land Acquisition and Mining*

The lease has been given on "*Gaucher*" land by the government. Such lands though traditionally in the control of the gram sabha have effectively ended up with the government. The common lands were handed over to the contractor without any consultation with the gram sabha. Dharmendar Chopra, a contractor from Sambalpur, holds the lease for Tekka Dodda quarry. Like all other contractors in these parts, Chopra is a non-advansi. The lease is for a minor mineral and the unit is a stone quarry with some crushing units. The major operations of the include extraction and crushing. One of the reasons for choosing the area by the company was the abundance of stones (granite). The researchers were informed that the company was making average profits. In terms of employment generated, the company hires as many as 400 persons on some occasions, with almost all of them being on daily wage basis.

### *3.8.2.3 People' Experiences*

While there was no land acquisition through the government system, the mine owner did consult the Gram Sabha prior to getting the lease. The Gram Sabha also gave an NOC for the lease. Most of the members of the Gram Sabha were present for the meeting where this was discussed. When the mining was being proposed the villagers felt that they would get a lot of benefit from the mining operations and their village would develop. However, there has not been any significant improvement in the village due to the mining activity. The villagers have started facing a problem due to the dust pollution, which is leading to respiratory problems. In addition to that most of the villagers have only been employed as daily wage labourers and appeared disappointed with the arrangement. The payments are made on per load basis and the villagers are effectively getting less than minimum wages. Tired of the continual harassment with respect to wages the tribals of Tekka Dodda have launched a protest (Box 3.1).

### *3.8.2.4 People's Reaction*

The gram sabha meets four times a year to discuss the welfare activities in the village and does not discuss any issues related to the mining operations. The panchayat members are

aware of the fact that there should be revenue sharing between the state and the village. However none of the villagers seem to be aware of it.

***Box 3.2: People's protest – extracts from a report by Nityanand Jayaraman<sup>12</sup>***

On 15 January 2003, Babulal Tandia, an adivasi, had already been sitting on dharna with 60 others outside the SDM's office for four days. All the protestors were Adivasis and all were "coolies" from a stone quarry-cum-crushing unit in nearby Tekka Dodda. The Tekka Dodda quarry employs about 400 people, mostly adivasi men. "We remove rocks, break them, carry them over a distance and load the truck. It takes eight people twelve hours to load one truck. We get paid Rs. 220 for the effort," says Babulal Tandia. That's Rs. 28 per worker for 12 hours of backbreaking work.

K.P. Dewangan, the local SDM, is dismissive of the protesting adivasi workers. "Those people are lying. They never worked there . . . Why are they singling out only one mine? There are so many contractors working illegally here," he says.

"There was a problem with the labour in Tekka Dodda. I spoke to them and asked them to get back to work. They requested that the rates be increased because it wouldn't be good for them to break their strike without achieving anything. So I asked the contractor to increase the rate by Rs. 20. The workers have resumed work. Go check for yourself," he explains. "This lot here is looking for easy money."

Babulal explains that the workers' demand -- of Rs. 75 to Rs. 80 for a long day's work breaking stones -- is a fair one. Ironically, barely 20 km from the SDM's office, a stone crushing operation at Khurri pays an equivalent wage of Rs. 80 for similar work over an 8-hour day.

"If it was Panchayat Raj, would we still be fighting for minimum wages?" asks Chetan Tandia, an adivasi labourer and trade union activist from Astara village. SDM Devangan, for his part, says he does not know the minimum wages for the mining sector. Fact aside that, by his own admission he had resolved the Tekka Doda labour problem by arbitrarily increasing the rate to Rs. 240 from Rs. 220 -- an effective wage hike of Rs. 2 per day per worker.

Indian labour law not only provides for minimum wages, but also for provident fund deposits, safe working conditions and safety equipment -- helmets, boots and gloves, in this case. But, as Chetan Tandia says, the workers can't afford to fight for these rights while even minimum wages are an issue.

### *3.8.2.5 Final Word*

Thus as can be seen even when all the rules for awarding the lease have been "followed", the villagers are facing problems due to the mining. This raises the question of whether the villagers are making informed decisions or if they are being misled during the process of obtaining the NOC. Once an NOC is given they have very little control on what happens in their village. There is hence a need to ensure that the mining operators are responsible to the villagers even after they start mining and not just when they want a lease. While the government functionaries can play a role in this, their obvious bias is towards the mine owner. When it comes to revenue sharing as per the act, the villagers are once again

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<sup>12</sup> This is an extract from a report sent by Nityanand Jayaraman an independent journalist, who went to the area on the request of Samata.

unaware indicating a lack of transparency at the local panchayat level. Here too the government functionaries can play a role in spreading awareness of the provisions.

### ***3.8.3 Case Study of Village Markatola***

*Village: Markatola*  
*Tehsil: Kanker*

*Panchayat: Markatola*  
*District: Kanker*

#### *3.8.3.1 Background*

Markatola has a population of 1096 villagers (1991 census). The village has all the basic amenities of school, electricity, road etc. Agriculture is the backbone, with rice being the major crop.

#### *3.8.3.2 Land Acquisition and Mining*

Prior to 1991, Bauxite India Ltd, a Kanker-based private company, had begun mining the area. According to Markatola villagers, BIL excavated and shipped out truckloads of rocks from a 152-acre patch of their Nisthar jungle (common property). In the process, they say, more than 10,000 trees were felled. The fight to put an end to the tree-felling and illegal mining exacted a deadly toll on the Markatola villagers. The village was divided; villagers turned hostile and violent towards one another; peaceful protests and meetings were violently disrupted; a young adivasi activist was killed by a paid thug, who was arrested but eventually released. The village protests and pressure applied at the local level has managed to stop mining for the present. BIL's lease over the land, its acquisition and the mining and timber-felling were all illegal. Despite that, no action has been taken against the company or errant officials of the forest and other relevant department.

#### *3.8.3.3 People's Initiative*

This village does not have any mining operations taking place right now and is unique as the villagers have formed an adivasi cooperative to undertake mining operations. As per the 1997 Supreme Court judgment in the famous Samata<sup>13</sup> case against granting of mining lease over adivasi lands to a private company

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<sup>13</sup> Samata Vs State of AP & Others, AIR 1997 SC 3297

*"Minerals should be exploited by tribals themselves either individually or through cooperative societies with financial assistance of the State. At least 20 percent of net profits should be set aside as permanent fund for development needs apart from reforestation and maintenance of ecology."*

Even the avowed policy of the state government is to encourage adivasi to form cooperatives and give priority to such societies in granting leases for mining. In 1995, 24 Adivasis – including Indu Netam and eight other women – ventured to set up a cooperative society to pick up mining leases in the area. The Markatola Adivasi Khanij Utkanan Sramik Samiti is the kind of adivasi cooperative that the Supreme Court refers to and the Chattisgarh policy wants to encourage.

But leave alone financial assistance, the Government machinery has been downright hostile to the prospect of Adivasis operating a mining business, according to Mohan Singh Netam, secretary of the Samiti. In 1996, the society was registered after much delay. Indu Netam explains that the delay was largely due to their refusal to pay a bribe of Rs. 10,000. Shortly thereafter, the Samiti obtained the recommendation of the Gram Sabha for its application for prospecting license for Ilmenite and Kaonite, minerals that are used to manufacture refractory material capable of withstanding high temperatures.

“We’re being kicked around from one Government department to another. If we go to the mining department, they send us to get forest clearance. If we go to the forest department, they tell us this is revenue land and to go get an NOC from the collector,” says Indu Netam. Every trip to the district headquarters or Raipur costs the Samiti dearly. Their bank balance is a meagre Rs. 15,000. “If they can have single-window clearance for foreign mining companies, why can’t they have the same for adivasi cooperatives?” she asks.

The forest department, where clearance is pending since 1997, says the reason why permission has not been granted is because there are trees on the revenue land. Barely 12 kilometers away, in Chargaon village, a board announces details about the holder of a lease for mining iron ore in thickly forested lands belonging to the Forest Department. The

thickly forested prospective mine is bordered by a dug-up wasteland – a used iron-ore strip mine. According to Chetan Tandia from nearby Astara, the abandoned mines resembled the nearby-forested lands until “five or six years ago” when the mining had not yet begun.

If PESA were strictly implemented, adivasi cooperatives could indeed be running these quarries and mines, perhaps in a far less destructive manner. “The cooperative members would provide the labour from within the village. We would share the profits and risks, and return a share to the village funds. Other villages could also use their resources wisely to generate employment for their own people and for the benefit of the whole village,” says Indu Netam.

“If our village lands were truly in our control, we would not allow it to be stripped and destroyed by contractors . . . in fact, there would be no contractors, no middlemen,” she adds. “It may take us some time to learn the business, but let the Government help us learn.”

#### *3.8.3.4 Final Word*

As is evident from the above the policy of the state government to encourage Adivasis to form cooperatives and exploit the minerals in their area is merely eyewash. While the policy pronouncements are quite lofty, there are hardly any mechanisms in place for its effective implementation.

### ***3.8.4 Case Study of Village Khudaridih***

*Village: Khudaridih  
Block: Narmadapur*

*Panchayat: Kamleshwarpur  
District: Sarguja*

#### *3.8.4.1 Background*

The village of Khudaridih is situated at a distance of 85 km from the district headquarters of Ambikapur. The nearest township is Sitapur, which is at a distance of 31 kms from the village. The closest market place is Narmadapur, about 5 kms from the village. Khudaridih

has 148 households with 226 families (as per 1991 census). The majority of people in this village are Adivasis. Among the Adivasis, the majority of them belong to Majhi.

Around ten percent of the villagers do not have any landholdings. Even if people have the land but they don't have the land entitlement in their favour. In some cases they hold the patta but the land is in the hands of the mining company. The cultivation is solely dependent on rainwater. This makes agriculture quite uneconomical and the average productive value as assessed by the people is only Rs. 500/- per acre, which is quite meagre by any standards. 63% of the Adivasis have land holdings less than 2 acres. The dalits are the worst off with none of them having land holdings of more than 2 acres. Of the four villagers who have land holdings of more than 10 acres all of them are non-tribals.

The land earmarked for the cemetery is 5 acres and even this has gone down as the mining activity has increased. There are 50 hectares of village forest in the records, however hardly 30 acres of it is leftover as forest as told by the Panchayat Secretary Mr. Ramnarayan Singh Paikra. On the remaining land there is not even a shoot of a tree, continued the Secretary.

The village is facing a major problem of accessing safe drinking water despite having 15 hand pumps. There are 4 dug-wells without water most times except during the rainy season. According to the villagers the taste of the water is also not good. Hence they at times depend upon the natural water sources like streams and *nalas* even for the drinking purpose. There are 2 primary schools, 1 middle school and 1 anganwadi. There is no hospital or any sort of health facilities in the village up till now.

As in other Adivasi regions of the country, this region and particularly Khudaridih is very rich in terms of culture and festivals. Since the majority of the people in this village are Adivasis, a whole range of festivals based on the Adivasi faith and culture are being followed. Apart from these drinking of the local brew is a common habit among them. It is used for all auspicious ceremonies right from the birth to death of every person in the

community. Death is not seen as a time of grief, rather there is more celebration during deaths in the community.

#### *3.8.4.2 Land Acquisition and Mining*

Mining activities are going on here since 1991 in and around 3 villages. The major activity here is the extraction of bauxite ore, which is taken to Sterlite's (BALCO) processing plant in Korba. The villagers were not aware of the extent and duration of the mining activity; however they have to come to hear that the mining lease has been granted for 20 years to BALCO. Initially all mining activities were centred on government land but slowly land was taken from the people. Nearly 600 hectare of land has been taken up mining, as told by the Sarpanch, Mr. Jagpal Singh Paikra.

Buying of land was based on various allurements or promises from the company that one person from each family will be given employment in the mines, the village will be electrified, welfare activities such as providing drinking water, water for the fields for cultivation, schools for children, hospital for the villagers and other welfare activities and further they will get their land back after the extraction of the mineral from the land.

However once the acquisition was completed the promises with regards to jobs were not kept. Three hand pumps were installed but water from none of them are of drinking quality. Other provisions such as recreation centres, parks, etc. have been never thought of. In some cases the villagers came to know about land acquisition only after their land was demarcated. The permission for taking land from them was not taken, nor did the revenue department notify them legally. There was no rehabilitation package either from the company or from the government. The government also did not seem to have applied pressure or ensured that the company undertake rehabilitation. The only compensation provided was a paltry 12,000/- rupee per acre in 1994-95. According to the people of Khudaridih even in those days the minimum market value of land per acre was in between 15,000/- to 16,000/-. This compensation was only for those who held land entitlement (*patta*); those who were landless or possessing land without entitlement and cultivating on it for generations have not received anything even as compensation.

As mentioned earlier people were not provided with jobs as promised by the company management. The only work that the people in this village got was that as manual labour engaged in breaking the stones. Even here most of the workers are from outside. Hence there is no question of worker's organisation or worker's unity or any sort of Trade Union. The state government has a minimum wage provision of Rs. 52.66, while the labour working in the mines get only Rs. 48.75 per ton. Even in that they have to separate one ton of bauxite after removing the dust, other laurite, wastes, murrum, etc. Many times people spend days in removing the waste from the bauxite for which they are not even paid. The total number of workers in the mines is nearly 5000, out of which less than 10% (nearly 400) are from the surrounding villages.

The work environment is also not very good. There are occupational problems for the labourers about which the company is seldom concerned. Health problems such as breathing problems, problems with eyes, etc are quite prevalent. Women who are working in such environment have problems during pregnancy period. Normally women carry their tiny ones along with them to the work place and feed them whenever needed during the day. They have to do this to avoid being removed from the work.

#### *3.8.4.3 People's Experiences*

Due to the extensive mining in the village the water level has gone down drastically. As mentioned the four dug wells in the village have gone dry and some of the hand pumps are not also functional. Harassment of women also has gone to alarming heights, with some women forced to go into prostitution. The villagers felt that this is happening as there has been an influx of men from outside (especially drivers, cleaners and other workers) and they have entered into relationship with some of the local women. There are cases of abduction of women from this area. Most such cases go unreported as the people have lost faith in the system and do not feel that anything would be done. Drinking of local brew as already mentioned before is a part of Adivasi life and culture, but it has increased to alarming heights with the advent of mining activities. As they are no more just drinking the local brew, but have to pay cash to drink, it has become a very lucrative business and is threatening their livelihoods and economy of the people.

#### *3.8.4.4 People's Reaction*

During the initial days the villagers opposed the project and numerous petitions were handed to various government officials. Some of the political parties also supported them in the beginning but soon changed their sides and stopped opposing the bauxite mining. Formerly Khudaridih was a part of Barima panchayat. Mr. Daljit Yadav was the Sarpanch at that time and the BALCO officials approached him to get his signature on some documents. As he was not available, they stamped the paper with his seals and some villagers feel they might even have forged his signature.

Some of the villagers felt that the company has taken all the land they needed, though in the same breath they mentioned that the company might expand and acquire more lands. The villagers sounded very confused and almost dejected as they did not seem to have any control on what the company and mining activities was doing to their lives. As one of the villagers mentioned "whenever the company finds any land useful for mining they take it irrespective of the affect on the people who are living of the land". It appears that the company is also engaged in acquiring land in an illegal manner. As mentioned the people's past experience in protesting against the company and acquisition were unsuccessful and now they feel that nothing is going to come out of such protests, "we are only wasting our time, energy and resources" is the common repent.

Gram Sabha is being held once in every three months. Mostly problems related with the villages are discussed during the Gram Sabha. None of the problems related to the mining activity are discussed in it. People are not aware of their rights under PESA. Some of the villagers mentioned that the Zilla Panchayat dictates the agenda for the meeting and most often the local problems and issues of the people are not discussed.

#### *3.8.4.5 Final Word*

The word development has become the most hated term for the villagers of Khudaridih. They have seen their graveyards being dug under the pretext of development. People today are demanding land for land. They feel that the basic amenities such as school, hospitals, drinking water, irrigation, sanitation, etc. should be provided by the company without

delay. The company should also take care of our life/health insurance and crop insurance too. "We feel that the company is applying the British policy of Divide and Rule", asserts Balram Yadav the Up-Sarpanch of Khudaridih. The land acquisition was done when BALCO was still a public sector company and hence it would appear that the government itself has cheated the villagers from obtaining just compensation. The mining activity and the process of land acquisition has demoralised and broken the tribal community to a point where they consider themselves to be lesser humans. The villagers seldom have knowledge and understanding about their rights and responsibilities and provisions of PESA in Scheduled Areas. This leads to more exploitation and unfortunately the various field units of the government also do not sufficiently inform the villagers about their rights.

Recently with the change of management, i.e. from BALCO to Sterlite Ltd., the situation has gone from bad to worse. The new management is harsher with the people. Retrenchment of labourers has started and the work force is being reduced day by day. Even the payments of those are still working is being delayed.

### ***3.8.5 Case Study of Village Parsa***

*Village: Parsa*  
*Block: Ambikapur*

*Panchayat: Parsa*  
*District: Sarguja*

#### ***3.8.5.1 Background***

Parsa is around 13 kms from the district headquarters of Ambikapur. There are 23 different communities in this village, with a majority of them being Adivasis. The majority of the Adivasis belong to the Gond community. Mr. Kevin Ekka, the local patwari informed the researchers that most of the people (70%) in the village have land holdings of less than 5 acres. Nearly 9% (all dalits and Adivasis) of the villagers are landless. Eighty-eight percent of the Adivasis have less than 5 acres of land.

The land in this village is arable, though there is no irrigation facility. There are a few canals without water and it flows only during the rainy season. There are a few rivulets and brooks flowing but these cannot be tapped due to the uneven topography of the

countryside. Hence cultivation is solely dependent on rainwater. However agriculture here is not as uneconomical as in Khudaridih village, the villagers get enough to survive and make a living out of it.

The villagers use the hills surrounding the village as grazing land. There is no clearly earmarked land that can be termed as grazing land. The village has got 190 acres of *Bade Jhad Ka* Jungle and around 100 acres of reserve forests. Similarly nearly 312.50 acres of land is also marked as forestland and wasteland in the village records. The villagers have occupied some portion of the so-called forestland and they are cultivating on it. The village has got around 10 acres of graveyard.

There are 20 hand pumps, although some of them are not functioning. There are 4 dugwells for the community. There are 3 primary schools, 1 middle school and 1 high school. For this purpose the people have provided nearly 12.70 acres of land from the village property. Apart from the normal agriculture work in the village, people here mostly go to Ambikapur in search of work. Many of them get work during the agriculture off-season. They work as masons, helpers, or are engaged in brick-kilns and construction work. These are all daily wage labour and it helps in supplementing the family income. People don't get any sort of economic benefit from the nearby forests adjacent to the village. Nevertheless people from this village have never migrated out of this place in search of livelihood only because of the strength of their economic structure.

As in the case of Khudaridih the people of this village are also very rich in terms of culture and festivals. For the villagers both births and deaths in the village are times of celebration. Death is not considered just as a time of grief, as the villagers believe that all the dead become gods and goddesses of the community and take care of those who are alive. Drinking is a habit and in most of the Adivasi communities whenever there is a newborn babe, or marriage or festival or even death, the people have the tradition of drinking. During marriage there is no custom of giving or taking dowry.

### 3.8.5.2 Mining Operations - Proposed Stone Mines

Mining activities have not yet started in the village. However people are aware of the fact that there are stone chips (*gitti* - a minor mineral) that can be extracted from the uneven plateaus of the village. While presently no one has directly approached the villagers for permission to mine in their village the villagers believe that the day is not far when they would be asked for permission. They have vaguely heard of some contractors who have an interest in mining in the area, but nothing concrete.

The villagers are of the opinion that when mining does come they will surely lose their lands. According to them, *“this will certainly bring destruction to the village and doom the future of the people. They will procure profit and we will be reduced to margins”*. They are apprehensive of any mining activity and some of them are organising themselves through the Gram Sabhas to ensure that if at all they are forced to give their lands for mining activities they will ask for more compensation. The villagers said *“they should pay us double the market rate for the land, so that we can buy more than what we already have. If we are dispossessed off our land that we are not going to accept as they (the destructors) think about.”*

### 3.8.5.3 People's Preparation

The villagers are aware of the PESA Act and that Adivasis have got more rights than earlier. They are not completely aware of all the provisions and only slowly beginning to learn of the provisions, which give them a right to determine whether or not they want mining. They are now prepared to take up the issue in the gram sabha and the discussion around this is slowly taking shape in the village itself. The villagers are in a mood to oppose the project through the gram sabha. They are not ready to give up their private land for mining purpose.

The people of this village have a higher level of faith in Adivasi gods and goddesses. They strongly feel that their gods and goddesses will prevent all from any sorts of dangers and destruction. They won't allow the outsiders to mine the land, even if it is the barren land. There is no question of mining the private land as all our gods and goddesses live on it and

they are there to protect us from all sorts of problems and forces of destruction, says Mr. Ganjharam Thakur, the Sarpanch of Parsa.

#### *3.8.5.4 Final Word*

The villagers of Parsa do not seem inclined to give their land for mining as they have understood that mining leads to depletion of natural resources like water, forests, land, reduction in the arability of cultivable land, pollution of water, air and land also reducing the food grain production. Hence under such a circumstance it is essential to look into the question of national development through mining of minerals in the Adivasi based areas vis-à-vis Adivasi development through local and natural resources. The state, industry or administration has repeatedly broken the promises given to the ordinary people, particularly the Adivasis. It should be absolutely imperative to complete proper and adequate rehabilitation before disposing anyone from his land or property.

## CHAPTER 4 - RAJASTHAN

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### 4.1 PROFILE

Geographically, Rajasthan is the largest state in the country. Rajasthan is divided into 32 districts that are further divided into 241 tehsils with more than 37000 inhabited villages<sup>14</sup>. The Aravalli mountain ranges that run from Delhi to Gujarat cut through the State almost vertically, dividing it into a southeast region and a northwest region. The northwest region covers two-thirds of the state and consists mostly of a series of sand dunes. The population of the state is 564.73 Lakhs as per 2001 census, with a rural population of 77%. Rajasthan is a predominantly agrarian state where agriculture contributes more than 40 percent of the States Domestic Product and with about 70 per cent of the total population depending on it.

The state has a total scheduled area of 19508.43 square kilometers spread across 5 districts. Banswara has the maximum tribal population followed by Udaipur and Dungarpur.

*Table 4.1: List of districts, area and population under scheduled areas*

District	No. of blocks	Area (in sq. km)	ST Population	ST %	Villages
Udaipur	6 fully, 1 partly	7853.13	777030	68.85	1511
Banswara	8 fully	5076.95	849050	73.47	1435
Dungarpur	5 fully	3565.34	575805	65.84	847
Chittorgarh	2 fully	2153.9	145092	51.81	493
Sirohi	1 fully	859.11	54734	67.90	81
<b>Total</b>	22 fully, 1 partly	19508.43	2401711	68.24	4364

### 4.2 MINERALS AND MINING INDUSTRIES

Rajasthan has large deposits of both metallic and non-metallic minerals. It is the second largest mineral-producing State in India in volume and fifth largest in terms of value of mineral production. Of the total value of minor minerals produced in the country Rajasthan contributes around 30%. Of the 65 types of minerals found in the state, 42 are classified as major minerals and 23 as minor minerals. Presently 1324 mining leases of major minerals (area of 157339 hectares), 10851 mining leases (81055 hectares) of minor minerals and 19251 quarry licences are in force. Of the minor mineral leases, almost 36% are for

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<sup>14</sup> as per 1991 census

marble. Rajasthan also has the distinction of having issued the largest number of small mining leases in the country.

It is the third largest producer of limestone in the country and the only source of steel melting grade limestone in the country. It contributes significantly to country's production of ceramic minerals and accounts for large proportions of the country's production of mica, feldspar, silica sand and phosphorite. Large deposits of copper ore, lead-zinc, iron ore, manganese ore, tungsten ore and pyrites are located, primarily in the North-eastern and Southern regions of the State. The State produces 99 per cent of India's zinc, 90 per cent of copper ore, 80 per cent of lead concentrate and 56 per cent of tungsten concentrate. Rajasthan is the largest producer of marble and sandstone in the country (Tables 4.2 and 4.3).

**Table 4.2: Mineral Production in Rajasthan % Contribution**

Mineral	% of India's Production	Mineral	% of India's Production
Wollastonite	100	Jasper	100
Zinc concentrate	99	Fluorite	96
Gypsum	93	Marble	90
Asbestos	89	Soapstone	87
Lead concentrate	80	Phosphate rock	75
Ball clay	71	Calcite	70
Sandstone	70	Flaggy limestone	70
Feldspar	70		

**Table 4.3: Production and Reserves of Important Minerals**

Name of the Mineral	Total Reserves as of 1995 <i>In Million Tonnes</i>	Production in 2000-01 '000 Tonnes
Lead & Zinc Ore	400	2487
Copper Ore	165	967
Tungsten Ore	50,000 tonnes	-
Limestone (as major mineral)	4000	20132
Rock Phosphate	100	1192
Gypsum	1050	2682
Lignite	1400*	222+
Fluorite	4.18	1.03
Clay (Ball clay & Fire Clay)	225.82	441
Granite	3000	52**
Limestone (Building stone)	Large	20132

+: Figure for 1999-00

\*\* : Figure for 1997-98

Amongst the important mineral based industries in the State are the two zinc smelters installed by M/s Hindustan Zinc Limited at Debari and Chittorgarh, copper smelter installed by M/s Hindustan Copper Limited at Khetri, 15 large Portland cement plants having a total production capacity of 13.9 million tonnes of cement per annum, two white cement plants at Gotan having a total annual production capacity of 5.4 lakh tonnes. 9 mini cement plants, ceramic insulator plant at Alwar, rock-phosphate benefaction plant at Jhamarkotra set up by M/s RSMML.

There are also about 1200 marble processing plants located mainly at Makrana, Rajsamand, Udaipur, Kishangarh, Jaipur, Chittorgarh and Banswara, about 300 granite processing plants including 40 gang saws mainly installed at Kishangarh, Rajsamand, Jaipur and Jalore. There are 3096 minerals based small-scale units existing in the State with an investment of Rs. 853.4 crores. There are 121 large and medium scale minerals based units with an investment of Rupees 3424.43 crores. During April-December 2002-03, Rs.595 crores worth of minerals was produced in the State.

### **4.3 MINING LEGISLATION**

#### **4.3.1 Mining Laws**

Rajasthan promulgated the Rajasthan Minor Mineral Concession Rules on March 4<sup>th</sup>, 1986. Following are the salient features of the rules:

- The rules provide for three different types of leases
  - Mining lease - similar meaning as under the Central act
  - Quarry licence – licensee is required to pay fixed annual licence fee and
  - Short term permit – permit granted for excavation and removal of specific quantity of mineral within specified period and from a specified area.
- The application for obtaining a mining lease is to be made to the mining engineer (or Assistant mining engineer) with jurisdiction of the area.
- Typical period for a lease is 10-20 years, upto a maximum of 60 years on renewal.
- The rules also place restrictions on number of leases for a certain mineral that a person can hold within an area (more than 2 within the jurisdiction of a mining engineer) and

in the whole state (not more than 3). These are however subject to relaxation by the authorities in the interest of mineral development in the state.

- For a quarry licence the government should make a notification of the plots in either the official gazette or a prominent newspaper in the local region. The applications have to be submitted in the prescribed form to the Mining Engineer/ Assistant Mining Engineer. The licence is granted for a period of five years and can be renewed each time for five year up to a maximum of 30 years.
- The rules also place certain restrictions on the maximum area of licence based on the different minerals.
- In the case of short term permits the rules place restrictions on certain minerals which will not be granted permits for extraction. Additionally there is a restriction of quantity (not more than 500 tonnes) that can be extracted. The application has to be made to the Mining Engineer/ Assistant Mining Engineer and they have the right to refuse the permit. The maximum time limit is also four months.
- In addition the rules also lay down some specific clauses for some of the minor minerals.

The Officers in the Department of Mining in Rajasthan deal with the lease and licence process almost exclusively. There is no mention in the rules about the rights of the Panchayatiraj institutions and the role of the rest of the district administration also appears to be quite limited.

#### **4.3.2 Mineral Policy**

The State's mineral policy, in force since 1994, encourages value addition through processing units and mineral-based industries, export of minerals and the exploitation of minerals deposits. Amongst the stated objectives of the new mineral policy are the need to explore mineral wealth of the State expeditiously particularly in the tribal, desert and remote areas and to increase the employment opportunities in the mining sector particularly, for persons belonging to Scheduled Castes, Scheduled Tribes and other weaker sections. As part of the effort the state wants to simplify and adequately modify the

Rajasthan Minor Mineral Concession Rules (RMMCR) of 1986 and come out with different leasing policies for different minor minerals.

In addition the policy stated that funds from other government programmes (primarily the rural development programmes) would be utilized for creating infrastructure for the mining industry. Specifically, it states

*Whenever feasible, construction of approach roads to mines shall be taken up under Famine Relief Programme; Jawahar Rozgar Yojana (JRY), Apna Gaon Apna Kaam Scheme' etc*

Looking at the inadequacy of welfare amenities available to the mine workers, the Government has decided to share 50% of the cost of construction of such amenities like schools, hospitals, dispensaries etc under various rural developmental schemes like "Apna Gaon, Apna Kaam". The rest of the expenditure is to be borne by the mining lessees.

Some of the key amendments proposed in the RMMCR are:

#### **Mineral lease**

- Period of a mining lease to be enhanced from 10 years to 20 years.
- Minimum size of the area for a mining lease to be revised from 50meters \* 50 meters to one hectare. The size of the granite and marble plots increased to 2.25 hectares.
- Existing provision of `deemed refusal' of application for (a) grant of a mining lease, (b) renewal of a mining lease and (c) transfer of a mining lease to be deleted.

#### **Quarry License**

- Period for a quarry licence (including any renewals) to be enhanced from one year to five years.
- Provision of deemed refusal of application submitted for transfer of a quarry licence proposed to be deleted.

### **Simplification of Procedures**

- District Collector empowered to issue the NOC for *Charagah* (grazing) areas not exceeding 4 Ha. Beyond that the application has to go to the State Government
- Provisions of 'deemed refusal' of applications for grant and renewal of prospecting licences and mining leases for minor minerals will be deleted from the Rajasthan Minor Mineral Concession rules, 1986.
- At present a copy of the order sanctioning the lease is sent to the District Collector requesting him to intimate within a period of 30 days, if there is any objection, to the mining operations in the sanctioned area. It has been decided that the Collector would communicate his final decision within the stipulated period 30 days. If the final decision is not communicated within this period, then the Collector will cease to have the powers in this regard and the matter shall be decided by the Divisional Commissioner concerned within a period of another 30 days. If the final decision is not communicated by the Divisional Commissioner within this period then clearance would be deemed to have been given.

### **Provisions for weaker sections**

- Certain areas of marble and other decorative stones, in which large investment is not considered necessary, will be reserved for the class of persons belonging to SC/ST and other weaker classes.
- A provision in the rules that all applications received for grant of a mining lease within the specified period of thirty days, shall be considered together, for granting the lease. This will provide ample opportunity to persons of SC/ST and other weaker classes for grant of leases of at least those minerals in which priority is to be given to them as per the rules. This policy is expected to substantially increase the employment opportunities for the weaker sections.

### **Forest Conservation Act problem**

- To overcome the problems due to the stringent provisions of the Forest Conservation Act, 1980, the State Government has constituted an Empowered Committee under the Chairmanship of the Chief Secretary. This committee would

take decisions and make recommendations regarding the inter-departmental problems from time to time.

- In-respect of areas, which are non-forest lands as per the revenue records, the Mines Department will furnish details of such applied areas to Forest Department, seeking objections, if any. If no objections are received from the Forest Department within the stipulated period of 60 days, it would be presumed that the Forest Department has no objection and consequently the Mines Department would allow grant/renewal of lease/licence.
- Provision for denotification of reserved forest areas for non-forest purposes with the prior approval of the Central Government to be used on merits and where mining would be more beneficial and serve the larger national interest, because of the export earnings. The State would recommend such cases to the Government of India for according permission to divert forestland for mining purpose.

In addition the policy also laid down some specific modifications, which the state government would recommend to the central government to make in its acts and rules for a smoother mineral exploitation process in Rajasthan. As is evident from the above the state of Rajasthan is also making all out efforts to encourage more mining and is prepared to do so at the cost of forests and the environment. The policy also wants to make the process of obtaining the NOC easier and the mining department wants to reduce the role of the collector further in this regard.

Keeping in view the Samatha judgment the State government has issued a GO (in 2000) through the department of mines and geology stating that all renewals, fresh leases to non-tribals in scheduled areas should be immediately stopped till further notice (Annexure 4). However, it appears that most often the leases are being renewed through various “back door” methods. Fresh leases are being given to tribals, without their knowledge i.e., in benami names.

#### **4.4 PANCHAYATIRAJ ACT**

In 1994, the state of Rajasthan passed a new legislation called the Panchayat Raj Adhiniyam, which repealed the existing Panchayat Samitis and Zilla Parishad Act of 1959. This was done based on the Constitutional (73<sup>rd</sup> amendment) act, 1993. Further after the PESA act of 1996, the state also enacted the Rajasthan Panchayat Raj (Modification of provisions in their application to the Scheduled Areas) Act 1999, hereinafter referred to as the Rajasthan PESA. While the Rajasthan PESA has reflected most of the provisions of the central act, they have in almost all cases qualified the provisions with the statement “as prescribed by the state government”. For example, the provision related to land acquisition reads thus:

*Section 3 (g) the Gram Sabha or the Panchayat Raj institution at such levels, as **may be prescribed by the state government**, shall be consulted by before making the acquisition of land in the scheduled areas....*

While the above provision seems to say the same thing as the central act it does not mean anything as the state government effectively yields the power. The provisions related to the mining lease and concessions are also no better and they state:

*Section 3 (i) no prospecting licence or mining lease for minor minerals in the scheduled areas shall be granted to any person or body of persons without obtaining prior recommendation of the Gram Sabha or the Panchayat Raj institution **at such level and in such manner as may be prescribed.***

*Section 3 (j) no concession for the exploitation of minor minerals by auction in the scheduled areas shall be granted without obtaining the recommendation of the gram Sabha or the Panchayat Raj institution **at such level and in such manner as may be prescribed***

Further to this act, the State government made rules for obtaining recommendation of the Panchayat Raj institutions for grant of mineral concession in respect of minor minerals. These rules were made in 2002 and were called the Rajasthan Panchayat Raj (Modification of provisions in their application to the scheduled area) rules. It states:

*Section 2: Recommendation for grant of any mineral concession in respect of a minor mineral shall be made by: (a) the concerned Gram Panchayat when the area falls within the jurisdiction of a single gram Panchayat; or (b) the concerned Panchayat Samiti, where the area falls within the jurisdiction of more than one*

*gram Panchayat; or (c) the concerned Zilla Parishad, where the area falls within the jurisdiction of more than one Panchayat Samiti.*

*Section 3: Procedure for obtaining recommendation – (i) the mining engineer concerned shall send t the recommending authority, as specified in rule 2 above, proposal along with a plan of the area superimposed on the revenue map and description report mentioning distance and beaming of one of the corner pillars of the area with a fixed reference point in the vicinity. (ii) the recommending authority shall consider the proposal and convey its recommendation within 30 days from the date of receipt of the proposal.*

The rule also provides for the recommending authority rejecting the proposal, the reasons for which need to be recorded and communicated in writing to the concerned Mining Engineer/ Assistant Mining Engineer. Thus in the case of Rajasthan, the mining department has to obtain the No Objection Certificate for the lease and not the applicant. The field visit to the villages revealed that it is the applicant who funds the gram sabha dinner, which follows the "issue of NOC".

The rules also provide for a clear cut guideline on what should accompany a request for a grant, thereby ensuring that the villagers are well informed prior to taking a decision, though it is a moot point as to how many of them would really comprehend the information being provided. It is also not clear from the rules as to what would happen in case the Gram Sabha/Panchayat/Parishad rejects the grant for a lease?

#### **4.5 STATE RESPONSE TO PESA**

***Box 4.1: Provisions of PESA (Act 40 of 1996) and state response - Rajasthan***

<b>Subject</b>	<b>Central Provision</b>	<b>Rajasthan Response</b>
Land Acquisition	Gram Sabha or the Panchayat at the appropriate level shall be consulted	<ul style="list-style-type: none"> <li>• The Gram Sabha or the Panchayat Raj Institution at such level, as may be prescribed by the State Government, shall be consulted before making the acquisition of land in the Scheduled areas for development projects and before re-settling 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;</li> <li>• <i>No specific prescription made thereafter</i></li> <li>• <i>The subject Acts (Land Acquisition Act and Coal Bearing Act) need to be amended in their application to the scheduled area</i></li> </ul>

<b>Subject</b>	<b>Central Provision</b>	<b>Rajasthan Response</b>
Grant of prospecting licence or mining lease	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	<ul style="list-style-type: none"> <li>• No prospecting license or mining lease for minor minerals in the Scheduled Areas shall be granted to any persons or body of persons without obtaining prior recommendation of the Gram Sabha or the PRI at such level and in such manner as may be prescribed</li> <li>• <b><i>Minor Mineral Concession rules need to be modified to reflect the provision</i></b></li> <li>• In deference of the Supreme Court judgment on the Samata Vs State of AP case, the State Government through the Department of Mines and Geology has issued instructions (in 2000) that all renewals, fresh leases to non tribals in scheduled areas should be stopped.</li> </ul>
Grant of concession for exploitation of minor mineral	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	<ul style="list-style-type: none"> <li>• No concession for exploitation of minor minerals by auction in the scheduled Areas shall be granted without obtaining the recommendations of the Gram Sabha or the PRI at such level and in such manner as may be prescribed.</li> <li>• Further has also defined (in 2002) the process of obtaining recommendation of the PRI for grant of any mineral concession. If the area falls in the jurisdiction of single gram panchayat then the prior recommendation of concerned gram panchayat, panchayat samiti to recommend if area falls within two gram panchayats and Zilla Parishad to recommend when area falls in more than one panchayat samiti. Also laid down the responsibility of obtaining the recommendation on the concerned mining department official, who is expected to send the map of the area where the mining is to be done.</li> <li>• <b><i>Minor Mineral Concession rules need to be modified to reflect the provision</i></b></li> </ul>

#### **4.6 OFFICIAL RESPONSE**

A total of eleven officers were met in Rajasthan. The officers belonged to different departments including Revenue, Mining, Tribal welfare and Panchayatiraj.

##### **4.6.1 Mining Related Officers**

###### **4.6.1.1 Process**

The process of awarding the lease for any major minerals is as per the central laws, notifications of MMDR act and the mineral concession rules. With regards to minor minerals, the state act is followed i.e., the Rajasthan minor mineral rules. In the case of a minor mineral the decision for awarding or rejecting a lease is made at the district level (through the collector) and for a major mineral the approval has to come from the Central

government. Some of the officers seemed to be confused as to the level at which the application is to be made, though they all said that normally the application is made at the district level for all minerals.

The application for the lease goes through the mining department and they have no information about the land acquisition request, except that the applicant as part of the application has to obtain an NOC from the district collector. The whole process of lease application has to be finished within one year, else it is considered as deemed rejected. Once the lease is given the Director, Mines and Geology (Udaipur) is responsible for the monitoring. Each district has a mining engineer officer, who monitors the lease. The leasing is done in the district jurisdiction. The district officials of the mining department see to it that the company follows the rules and laws and also adheres to the public purpose mentioned therein. With regards to the revenue that is generated from the lease, all the revenue goes to the state government and there is no sharing with the district or village level.

#### 4.6.1.2 PESA

The officers of the mining department mentioned that the people's institutions are consulted at the pre lease level for obtaining their no objection certificate. One of the officer mentioned that in the lease process the gram sabha is not consulted. *It appears from the discussions with the villagers and also the officers that the gram sabha is consulted only where the gram sabha is aware of their rights and knowledgeable about their powers.* Even where the gram Sabha or the gram Panchayat is consulted, their role is limited to the consultation process only, the actual decision of awarding is made by the mining department. As mentioned the gram sabha is held more in the form of a feast for the villagers and they are made to sign on the resolutions without there being any discussion.

The discussions revealed that the officers were aware of the PESA. Most of them became aware after the amendment was done in the state Panchayat Raj Act. However, they did not have any detailed idea of the provisions. Interestingly, one of the officials was not aware of the act though he did mention that no lease has been given to the mining company as the

government has issued a notification imposing a moratorium on mining, keeping in view the Samata judgment. One of the officers opined that the PESA had complicated the procedure further, instead of simplifying it as is required for encouraging investment in the mining sector.

#### **4.6.2 Land Acquisition Related Officers**

##### *4.6.2.1 Process*

The officers mentioned that the process of land acquisition in the state is as per the procedure of land acquisition laid out in the Central Land Acquisition Act, Tenancy law and GOs served to them from time to time by the government. The private party directly approaches the Land acquisition (revenue) department for acquiring the land. The application process starts at the district level where the Sub- Divisional Magistrate and Collector scrutinizes them, though this process, in some cases, might start at the state level.

The state level officials didn't mention anything about the Public Purpose as it is the district level administration that decides on the public purpose. They felt that that is right level at which to make the decisions as they can have a better focus on the overall development of the area keeping the basic requirements of the villages in mind. One of the officers mentioned that anything which is beneficial to the people or community like roads, railways, dams, irrigation projects, land required from time to time by the government for schools, hospitals, office buildings etc. can be construed as public purpose. The state itself does not have any guidelines on public purpose.

The officers also mentioned that in case a project is abandoned after the land acquisition the land goes to the government. Further the officials mentioned that the state doesn't have any rehabilitation rules or guidelines for the compensation but it is decided case by case in accordance with the local revenue rates. When asked about the revenue, the officials said that the revenue generated from the company is split as compensation, revenue fees and taxes. They also said that there are no fixed rules for compensation and are drawn case by case further adding to this the officials mentioned that revenue generated is deposited with the state government other than that which is paid to the displaced as compensation.

#### 4.6.2.2 PESA

The role of various stakeholders like villagers, company, government, etc. involved in the land acquisition process doesn't exceed beyond consultation but the Gram Sabha plays a major role, as they have to issue a No Objection Certificate (NOC) for any project to be started. The main problem that the department is facing is that the communities are not ready to part away from their land as it becomes difficult for them to get a suitable land for houses and agriculture. The officers also don't have any problem with present laws and didn't suggest anything in this regard.

The district level officials were also aware of the PESA and the subsequent notifications served by the top brass of the government. But they didn't say anything about the implications and the changes therein due to PESA and also couldn't recall the changes brought in by the PESA. They said that the relevant changes and modifications reflecting PESA and its powers have been included in the Rajasthan Panchayat Raj Act and these changes can also be seen in the land acquisition process. As far as implementation of the Act is concerned the government has issued necessary GOs to implement PESA.

*It is evident that the awareness of PESA among people is almost negligible which ultimately leads to the conflicts between the various stakeholders, therefore the government and NGOs should take necessary steps to spread awareness among the people so that they can exert their rights in right perspective.*

#### 4.6.3 Panchayatiraj Officers

The officers mentioned that the Rajasthan Panchayat raj act was promulgated in 1994 and the modifications, which followed it, reflected the new provisions pertaining to the scheduled areas. When the officials were asked about the role of department in the mining lease process they mentioned that the department doesn't have any role to play in the entire process and they are not even consulted in the process.

The officials also gave information relating to the gram sabha on Panchayat Raj elections, activities of the department, etc. They mentioned that the elections for panchayats were last held in 2000. The Gram Sabhas meet four times a year where they discuss the welfare

projects in the village as well as monitor the ongoing welfare projects and programmes. The officials also informed about the various activities they are undertaking to spread the awareness of PESA amongst the villagers and tribal communities. The officials couldn't recall any conflict related to the execution of PESA in the villages. In the end the officials briefly talked about the problems in implementation and said that not all the people are uniformly aware of the various regulations and rules of PESA.

In addition to the above, the researchers also met with the social activists working at Astha Sansthan, Udaipur. This organization is working in the field of tribal development and tribal rule in Rajasthan. They have also done a comparative study on the Central PESA and state version of the same. According to them the state act has a lot of lacunae in it, where they not accepted the central act. In some respects they felt that the state government has carried forward most of the things mentioned in the central act, but it still doesn't have enough teeth and lacks power. Finally they mentioned that the state act should be amended to make it more meaningful.

#### **4.7 COMMUNITY RESPONSE**

The districts of Banswara and Dungarpur were chosen for the field study, with two case studies from each district.

##### **4.7.1 Background of Districts Selected**

###### **4.7.1.1 Dungarpur**

The district of Dungarpur is the smallest district of Rajasthan and it occupies only 1% of the total state area. The total population is 11.07 lakhs and with a literacy percentage of 48%. More than 81% of the district population is dependent on agriculture and almost 93% reside in the rural areas. The agriculture in the district is primarily subsistence type with most of it depending on the rains. The per capita net area sown is only 0.14 hectares & per capita land holding is only 0.44 hectares.

The percentage of ST population as per 1991 census is 65.84%. The percentage of general caste is very low but they are economically dominant, who control more fertile agriculture

land & also maintain control over trade and commerce. Most of the district is taken up by hilly and undulating terrain inhabited by the Bhils who live in widely dispersed villages. In some cases the population of one village resides in the radius of 5 to 8 kms on hill sides or isolated hillocks. The last five decades has seen the disappearance of forest and increase of unproductive land by the way of soil erosion in the district. This is largely due to commercial exploitation of forests and the increased population pressure. Live stock rearing plays very important role in the peasant economy of Dungarpur. According to 1997 cattle census the District has a total cattle population of 13.12 lakhs, which is higher than human population. Amongst the main existing industries, marble slabs and tiles; and marble chips and powder are the primary ones related to the mining sector.

#### *4.7.1.2 Banswara*

The district of Banswara covers 1.47% of the area of the total state. The population of the district is around 15 lakhs with 44% of them being literate. About 84% of the residents of this district are dependent on agriculture. The district has 3 tehsils, 325 panchayats and 1444 inhabited villages. 92% of the population of the district resides in the rural areas. In this district also a majority of the peasants have livestock and the cattle population is almost 12 lakhs.

The main minerals found and produced in this district are limestone (9.8 lakhs tones in 1999-00); Masonry stone (2.23 lakh tones) and marble block (1.52 lakh tones). Hence the main existing industries in the mining sector are those related to marble tiles and slabs and Portland cement.

#### **4.7.2 Case Study of Village Surata**

*Village: Surata*  
*Block: Dungarpur*

*Panchayat: Nayagaon*  
*District: Dungarpur*

##### *4.7.2.1 Background*

The population of the village Surata is 1242 (as per 1991 Census) and the main tribes in the village are the Rohat, Meena, and Bhill. There is hardly any agricultural land to speak

of. The basic amenities available include drinking water, school, road, electricity and transport. The village is facing severe drought and there is no work to be found in the village and this has forced a lot of the villagers to migrate for labour work to Ahmedabad, Gujarat which is around 200 km away

The land given to the mining company was village common property, which was used for grazing their animals, called “Gaucher” in the local parlance. As per the villagers the land belonged to the Panchayat and now the company has been given the land. As the mining was started pre PESA there was no question of taking the permission of the villagers. There was no land acquisition process followed as the government considered the land as its property and gave the same to the mining company. Despite the fact that the land was the village common property, the villagers were not compensated in terms of being shown alternate lands for grazing their animals.

#### *4.7.2.2 Land Acquisition and Mining*

The land on which lease has been given is a wasteland which as the government comes under its purview. Thus there was no land acquisition process and the villagers were not aware of the mining operations till it came up in their vicinity. The company undertaking mining operations is called Khaitan minerals and the lease is in the name of Mr. Khaitan, the owner of the company. It is a private company and they are mining marble under a twenty year lease, of which almost 15 years are over. The marble will last another 20 years or so. The nature of operations includes extracting and cutting. The management of the company was almost invisible as they operate through “remote control”. Most such small companies operate with a bare minimum staff and in this case with just an accounts kind of person who deals more with the daily wage labourers and some minor shipment details. The company is not maintaining records of those working in their mine sites. This is primarily so that the mining company can quickly disassociate themselves from the "handicapped" worker, lest they have to compensate them.

#### *4.7.2.3 People's Experiences*

After mining the village economy has also changed and social evils like liquor and gambling have become rampant. Additionally, whatever little bit of land is available (or suitable) for agriculture is losing its fertility as the company is dumping marble dust on the soil. Some of the villagers are facing severe health problems including respiratory problems, eye and skin diseases.

When the company started mining operations in the village, they gave the villagers jobs. This was mostly by nature of daily wage labour work primarily for removal of the top soil to expose the marbles which were to be extracted. Once the earth work was over the company stopped employing as many locals and brought in labourers from outside the local area. In this manner more than 100 people have come from outside the village to work as daily wage labourers at the mine site. The wage rate being paid by the company is Rs. 40-45 per day of work. The situation in the village is quite bad and most of the villagers are migrating as sufficient work is not available in the village. In most cases it is the men who migrate to either work as domestic labour or in factories. Most of this migration appeared to be permanent, with very few villagers coming back.

#### *4.7.2.4 People's Reaction*

The villagers are not aware of PESA or its provisions, less so the women. The gram sabha is organised twice in a year and discusses general village issues and the different welfare works earmarked for the village. There is no discussion on the mining activities. The villagers see the mining activity as their only hope of any work. The land in the village is not suitable for agriculture and hence the villagers see mining as the only viable livelihood. However, the workers from the local villages get less than the workers from the other parts as they are mostly involved in unskilled work. The villagers were especially ruing the fact that dumping of mine waste (dust) onto agriculture fields is destroying whatever little fertility there was. The villager's lack of awareness of PESA and the powers of the gram sabha is also impeding their ability to lay out demands from the mining company.

### **4.7.3 Case Study of Village Rohanwada**

*Village: Rohanwada*  
*District: Dungarpur*

*Panchayat: Vagdari*

#### *4.7.3.1 Background*

The village of Rohanwada is around 15 kilometres from Dungarpur town. The population of the village is 1299 (as per 1991 census) and the major tribes include Bhills, Rawat and Meena. The village has some amount of patta land and also a lot of banjar (wasteland). The basic amenities include drinking water, school, road and electricity.

#### *4.7.3.2 Land Acquisition and Mining*

There are four companies operating in the area - Jain Marbles, Tirupathi marbles, Rishabh marbles and Pratap marbles. Other than Jain Marbles, which is owned by Manjula Jain of Rishabh Dev city and tehsil, the other three are owned by Mr. Devchand Norangi Patel. Other than the names of the leaseholders, the activities and operations of the companies are the same. They are all operating on 30 year leases for marble and the mine site is around 1-2 km from the village. All the companies are private companies and their operations include extraction and cutting. They operate on 100 into 100 square metres plots (i.e., 1 hectare).

The four mines mentioned above have come up in the grazing lands (*Gaucher*) belonging to the villagers and the panchayat. Similar to the first case study the government believed that they have right on the land as it is common property and does not belong to any one villager. There has been no land acquisition and hence there is no question of compensation or rehabilitation despite the fact that the land on which mining is taking place is village common property (*Gaucher*). The elders of the village remember that the government had given the grazing land to the companies almost on the sly without informing the village people. Now they are awaiting the expiry of the lease so that they can reclaim whatever little land is left un-mined.

Visual inspection revealed that there was no waste treatment process and all the waste from mine site was being dumped onto adjacent lands (which does not belong to the mine owner). In the Jain marbles lease site the marble would last ten more years and the present lease would also expire around that time. Of the 60 persons working in the Jain marbles, only 10 are local. All the locals are unskilled workers and work on daily wage basis. Apparently, the company does not maintain any records of the people working in the mine site. They physically tear the records every month. This was to make sure that none of the workers demanded permanent employment and the ensuing labour rights as also the company can get away "cheaply" in case of accidents. In the other mines around 80 persons are working, of whom 15 are local and balance non locals. As with the previous company the locals are all unskilled workers and employed as daily wage labour.

#### *4.7.3.3 People's Experiences*

Since the start of mining there has been no change in population and composition of castes and tribes, except the influx of some wage labourers who also are not settling down. The main livelihood pattern at present is as daily wage labourers in the Dungarpur city nearby. The wage rate varies from Rs. 40-50 per day. However, work even at these wages is hard to come by and the story in this village is also similar to Surata when it comes to migration - the villagers due to lack of work go to Gujarat and work as domestic labour or in factories and industries. Most of those who migrate do not come back.

#### *4.7.3.4 People's Reaction*

Interestingly, in this village the villagers are aware of PESA especially since the last two years or so. The women folk are also aware of the PESA and some of its provisions. The gram sabha meets twice a year and discusses issues related to water, school, road and health facilities. As the lease was given before PESA was promulgated, the villagers did not have a say in the lease giving process. The villagers in this village are fairly aware of their rights and have managed to obtain some facilities for their village including a school building (worth Rs. 51000). The villagers are also demanding the companies to provide Provident fund and health benefits for the workers.

The officials are turning a blind eye to their concerns and in some cases their peaceful protests and dharnas are being dealt with force. The villagers are also demanding that maximum number of locals should be recruited and there should be no wage discrimination. The company has been using violence against the villagers in which one person has lost his life and some others were illegally arrested. The villagers are in favour of mining as there are very few other viable livelihoods available in their villages; however they would like to take up cooperative mining with the involvement of the maximum number of villagers.

#### ***4.7.4 Case Study of Village Palada***

*Village: Palada/ Umrai*  
*Block: Banswara*

*Panchayat: Chaubiso ka Palada*  
*District: Banswara*

##### *4.7.4.1 Background*

The total population of the Palada village is 904 (1991 census) and that of the panchayat is around 5000. The Panchayat comprises of 8 villages. The Meena tribe is the predominant tribe. Most of the land in the village is wasteland (banjar), Khatedari (patta) and there is also some forest land. There are minimal irrigation facilities available from which some of the villagers are getting a wheat crop. The basic amenities are quite scarce, with no middle school, no road, no drinking water and no proper transport facilities.

##### *4.7.4.2 Land Acquisition and Mining*

There are more than 40 mining leases for marble in the Tripura Sundari area falling in the 4 km vicinity of Palada, Umrai and other villages. All the companies are private companies and there operations are primarily limited to extraction. One of the lease owners (close to the village the researchers visited) was M/s Gupta of Banswara and the name of his company was Gupta Marbles. This is an eighteen-year lease for mining marble. The company does not have any operations in the other areas and the mining is being done on government lands. The project was started 14 years back and the lease is due to get over in another four years. The marble "ore" itself would last at least another ten years. As per the

villagers the company is making profits. One of the main reasons the company chose this area for mining was the abundance of marble in the area.

Almost all the 40 companies who have leases in the area operate through daily wage labourers who come from the local area. 60% of the labour used is from the local area. None of the companies are doing any activities for the benefit of the local area. The villagers have been asking the government to give at least 1% royalty from the leases for the village welfare activities, however the government is not responding. The few company officials who were met were not aware of PESA, nor did they seem to care much about its provisions.

#### *4.7.4.3 People's Experiences*

One of the major changes after mining has been that the proportion of non tribals has increased. There are no directly affected villagers, though most of them are affected in the socioeconomic aspects as the village economy has undergone a change. The land which was previously treated as common property has been given to the mining company. The villagers are now working as daily wage labourers in the mines. The wage rate in this village is far better than in the other villages and they are getting around Rs. 50-60 per day. This could be partly due to the fact that there is probably some amount of labour market competition given the large number of mining companies operating in the region.

Most of the villagers are depending on daily wage labour for survival, as the extent of agriculture is also very low and employment opportunities minimal. Not all the villagers are also able to work in the mines, as the mine owners are looking only for the most fit and young. The older people do not find a place in such an economic system and are dependent on their younger family members. The women are the worst affected part of the population and they are working in the field or as housemaids. Some of them are going on drought relief works of the government. Some of the villagers have migrated to Indore (MP), Ahmedabad (Gujarat) and Ratlam (MP). Most of the migrated villagers are working in factories, industries or as domestic labour. The villagers migrate seasonally based on work.

The village itself does not seem to have benefited from the mines. Added to this is the fact of the various social evils (including the habit of liquor) the newly migrated populations have brought with them. The villagers are getting more and more addicted to liquor, which is becoming a social nuisance. Some of the villagers are suffering from skin, throat and lung diseases related to the levels of dust pollution. Respiratory problems have also gone up since mining

#### *4.7.4.4 People's Reaction*

On PESA there is no uniform awareness amongst the villagers. Some of them are aware of the Panchayatiraj but not the exact provisions. The ward members and the Sarpanch are aware of the some of the provisions of the PESA. The level of awareness of the women was far worse with very few of them having even heard it.

The gram sabha is organized around 4 times a year and only welfare activities and programmes of the village are discussed in the Sabha. Some of the leases were given through the gram sabha (i.e., through the No Objection Certificate process). However, there is no revenue sharing with the village Panchayat and the villagers have not heard from the mine owners or the government since providing the NOC. The company asks for the NOC from the villagers and uses it to obtain the lease from the government. The whole process is done in a very sly manner with the company “convincing” some of the village members and village level officials who in turn help the company obtain the NOC. The “promises” or dreams sold during the process of obtaining the NOC are never fulfilled. Typically when an NOC is need the government and company officials descend on the village and organise a feast for the villagers, where they make them “sign” on the “resolution”. Sadly, the villagers are broken and dejected with the state of affairs that in most cases they give in and consider this their “fate”.

The villagers do not feel that their quality of life has improved after the mining. The villagers do not have any interaction with the company anymore. The villagers feel that if they are provided 1% of the revenue that the government gets from the lease it could be used for activities beneficial for the whole village.

#### ***4.7.5 Case Study of Village Ittalla***

*Village: Ittalla*  
*Block: Kushalgarh*

*Panchayat: Sagwa, Sagwa Road*  
*District: Banswara*

##### *4.7.5.1 Background*

The main tribe residing in the village of Ittalla is the Garodia. With most of the land being wasteland and some household (Khatedari), the crops grown are wheat. There are no irrigation facilities available and the village falls in the drought prone region. There are no basic amenities in the village i.e., no middle school, no drinking water, no road, no transport facility. There has been no land acquisition for the mining company though now after the PR act of 1994 and State PESA of 1999, the panchayat is consulted and a NOC is obtained from the gram sabha.

##### *4.7.5.2 Land Acquisition and Mining*

The name of the leaseholder is Mr. Mansingh Rathod and he lives in Banswara. The company also carries the same name. The lease is apparently a short-term lease for building stone. The only operation is extraction. It is a private company and does not have any operations in any other locations. The land is government land and the reason for choosing the specific area for mining was the abundance of stone. Most of the villagers are employed by the company work as daily wage labourers. The company officials did not seem to be aware of PESA.

##### *4.7.5.3 People's Experiences*

There has been no significant change in the population composition since the mining activities started. The villagers are being employed as daily wage labourers in the mine site. As opposed to the other villages we studied only around 10% of the total jobs are being held by those from outside the area. This is partly because as the lease is a short term one.

The village economy is once again in quite a dismal condition and to supplement the family income the women work in fields, do domestic work, grazing of animals and go for

drought relief work. There is seasonal migration to places in Madhya Pradesh (Indore and Ratlam). Most of the migrants work in factories, industries or as domestic help

#### *4.7.5.4 People's Reaction*

The awareness of the villagers about the PESA act and its provisions is not uniform. Some of them are aware of Gram sabha and its powers, but most are not. Interestingly some of the women are also aware of the gram sabha laws, which was in stark contrast to the other villagers. The Gram sabha meets four times a year and discusses the welfare issues related to the village. There are no discussions related to the mine site and its work. In this village the gram sabha is being consulted for obtaining the NOC but there is no revenue sharing arrangement. The NOC is the only stage at which the villagers are “consulted”.

The villagers felt that their quality of life has not changed, due to the mining activities. The villagers have hardly any interaction with the company except to act as a supply of labour.

## ***CHAPTER 5 - ORISSA***

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### ***5.1 PROFILE***

Orissa is located on India's east coast. The present state of Orissa was formed in 1949, after merging the princely states in and around the Orissa which was carved out in 1938. Geographically Orissa may be divided into four distinct regions: the Eastern Plateau, the Central River Basin, the Eastern Hill Region and the Coastal Belt. Covering an area of 155,707 sq. km, Orissa has a population of 3.67 crores out of which more than 22% are tribals, with their concentration in Mayurbhanj, Keonjhar, Sundergarh and Koraput districts. Orissa has one of the largest concentrations of tribal population in the whole country with a number in excess of 70 lakhs.

The rural population is 85% and most of them are dependent on agriculture. The literacy rate in rural Orissa is more than 60%. There are 30 Zilla Parishads, 314 Panchayat Samitis and 5259 gram panchayats in the state, with a total of 46989 inhabited villages. As per the 1991 census the scheduled area comprises of 44.7% of the geographical area of the state.

### ***5.2 MINERALS AND MINING INDUSTRIES***

Orissa occupies a substantial portion of the mineral rich zone in India. The rich mineral belts lie in the western and north-western parts of the state. The mineral belt is spread over in an area more than 6000 sq. km. Orissa has three major mineral belts

- the coal belt which comes under three districts - Angul, Jharsuguda and Sundergarh
- the bauxite belt which covers major areas of Koraput, Kalahandi and Bolangir district and
- the iron ore and chromite belt coming under Jajpur, Dhenkanal, Mayurbanj, Keonjhar and Sundergarh district.

Orissa is home to a large number of Central Projects with a substantial number of them being related to the mining sector. Other than the major public sector mining companies, there are more than 300 odd private mining companies operating in the state.

Of the total deposits of the India, Orissa accounts for 98.7% of Chromite, 70% of bauxite, 26% of Iron Ore, 23% of Coal and 38% of Graphite<sup>15</sup>. Table 1 shows the major minerals available in Orissa and their reserve position as in 1994-95. The value of the total mineral and ores produced in Orissa was Rs. 2605.05 crores in the year 1999-2000 and the share of mining revenue to total non tax revenue of the state was 49% in 1998-99. The total value of mineral production is around 6% of the total onshore mineral production in India.

*Table 5.1: Estimated mineral reserves of Orissa, 1994-95*

Mineral Ore	Reserves in million tonnes	Percentage of India's reserves	Districts
Coal	46527	23%	Angul, Jharsuguda, Sundergarh
Iron ore	3120	26%	Keonjhar, Sundergarh, Jajpur, Bolangir, Mayurbhanj
Bauxite	1670	70%	Koraput, Rayagada, Bolangir, Bargarh, Kalahandi
Limestone	1212		Sundergarh
Chromite	183	98%	Jajpur, Keonjhar, Dhenkanal
Graphite	1.5	38%	Bargarh, Bolangir, Naupada

In terms of mining leases for major minerals, Orissa<sup>16</sup> has granted/executed 620 leases. These leases cover an area of 105 thousand hectares. The leases themselves are only 7% of the total leases in India, but the area is around 16% of the total leases area in the country. This indicates that normally the leases are for large areas. Table 2 provides a list of some of the prominent mining districts and the numbers of mining leases given as on 1991. As can be seen the mining activities are concentrated in some of the districts, with Keonjhar and Sundergarh accounting for more than 50% of the area under lease. These happen to be districts with high concentration of tribals with a dominant area in them being classified as scheduled areas.

*Table 5.2: District Wise Leases and area covered - Orissa*

District	No. of leases	Area (in Hectare)	Principal minerals
Keonjhar	150	41872.55	Iron ore, manganese
Bolangir	130	3729.31	Graphite
Kalahandi	79	2153.69	Graphite, Quartz
Mayurbhanj	66	15937.63	Iron ore, China clay
Sambalpur	100	10685.1	Fireclay, Graphite
Sundargarh	172	38291.69	Iron ore, Limestone, Manganese ore

<sup>15</sup> Source: Mineral Statistics of Orissa, 1994-95

<sup>16</sup> as on 31-3-1999

The development of the mining sector and minerals is taken care of in the state by the department of steel and mines. The various activities of the department include:

- Exploration and assessment of mineral deposits in the State
- Processing of applications for mineral concession
- Survey and demarcation of granted ML/PL areas for major minerals and quarry leases in accordance with the provisions of Mines & Minerals (Development & Regulation) Act, 1957 and Mineral Concession Rules, 1960
- Monitoring of various provisions of mining laws, Administration of minor minerals under Orissa Minor Mineral Concession rules, 1990.

The new initiatives of the department include formulating a well defined and transparent "Mineral Policy of Orissa" which they hope will provide a foundation for sustainable development of minerals.

The new liberalization policy of Government of India in the mining sector has opened the doors for foreign investors in Orissa. Foreign firms like the global mining giants Rio Tinto, Continental Resources Limited of Canada, and Empire Gold Mines N L of Australia have entered into joint venture agreements with OMC. Others like De Beers, Ashton Mining Ltd. Leader Mining Corporation, Canada, etc. have indicated their interest for joint ventures. The state is making all out efforts to encourage some of these companies (which have dubious environmental records) to invest in Orissa, by providing them with incentives and also promising them with infrastructure facilities at subsidized rates.

The 1996 industrial policy of Orissa has also identified mining as a thrust area. The focus of mineral development has been defined as:

- A new mining policy
- OMC welcomes participation in Joint venture mining/processing Industries
- A new granite policy. Gemstone polishing industries to be encouraged

### 5.3 MINING LEGISLATION

The current operating rules for minor minerals were formulated in 1990 and were called the Orissa Minor Mineral Concession Rules, 1990. Some of the salient features of the act are listed below:

- The act starts off by defining competent authority and controlling authority, who vary not only for the type of mineral, but also for the type of land on which lease is being asked for. Primarily there are four types of controlling authorities – Board of revenue (for certain specified minerals found within village boundaries); Principal Chief Conservator of Forests (certain types of minerals found in any reserve forest area); Director of Mining and geology (certain types of minerals); government in the Steel and Mines Department (all minor minerals not specified in the above lists and available anywhere).
- For each controlling authority there is a competent authority further up the hierarchy. Table 5.3 sums up the two schedules (III and IV) which define the competent and controlling authority.

*Table 5.3: Definition of controlling and competent authority as per Schedule III and IV of the Orissa Minor Mineral Concession Rules*

<b>Jurisdiction</b>	<b>Area occurring</b>	<b>Power to be exercised</b>	<b>Competent Authority</b>	<b>Department</b>	<b>Controlling Authority</b>
All types of rocks used for decorative, industrial and export purposes including dimension stone	Anywhere	For lease	Government in the steel and mines department	Department of steel and mines	Director of mining and geology
Ordinary clay, silt, ordinary sand other than used for industrial and prescribed purposes, rehmatti, murrum, brick earth, road metal, stones used for making household utensils, laterite slabs, boulders and gravels of ordinary stones, river shingles	Within Village boundaries	For permits	Tehsildar	Revenue Department	Board of Revenue
		For leases	Tehsildar upto 5 hectares Sub Collector above 5 hectares		
		For auction	Tehsildar when off set price does not exceed Rs. 5000 Sub Collector when offset price exceeds Rs. 5000		
	Reserve Forest Area	For Permits, leases and auction	Divisional Forest Officer	Forest Department	Principal Chief Conservator of Forests
Minor minerals other than those specified above and all minor minerals occurring in areas granted under mining lease for major minerals	Anywhere	For Permits, leases and auction	Mining Officer and Deputy Director of Mines	Department of Steel and Mines	Government in Steel and Mines

- The act defines two types of concessions – quarry lease (lease granted on tenure basis for a period not exceeding 20 years for extraction, collection and removal of minor minerals) and quarry permit (granted for a period not exceeding one year for extraction, collection and/or removal of any specified quantity of minor mineral). There is also a provision for disposal of minor mineral by public auction as prescribed by the controlling authority.
- The application for a quarry lease or a permit has to be made in the prescribed forms to the competent authority. The competent authority has to dispose the application within four months failing which the application is deemed refused.
- The maximum area permitted under one quarry lease is 100 hectares and no one person can hold a lease for more than 3 square kilometers in the state of Orissa.

#### **5.4 PANCHAYATIRAJ ACT**

The state of Orissa has separate acts to govern the different tiers of the Panchayatiraj system viz.,

- Orissa Zilla Parishad Act, 1991 – at the district level
- Orissa Panchayat Samiti Act, 1959 – at the block level
- Orissa Gram Panchayat Act, 1964 – at the village level

In addition to the above tiers, traditionally there is an additional tier in Orissa called the Palli. This is the smallest unit of decisions making in the traditional system and corresponds to the definition of Gram in the PESA Act and in the other states. The state act has ignored this level and starts the process of self-determination and devolution of powers from Gram Panchayat. The officials in Orissa have taken the "administrative" meaning of Gram and have defined the Gram Sabha (locally called sasan) as all those who constitute the village panchayat. Thus the gram sabha (sasan) itself would comprise of all the residents (in electoral rolls) of the panchayat, a number which on an average is around 5000. This is in contrast to other states where the typical size would be a function of size of the habitation. In Orissa the criteria is the panchayat village.

The state has made the necessary modifications as per the PESA in its three acts. The modifications were made on 22/12/97. The modifications relevant to the present study are listed below:

- Land Acquisition – As the land acquisition is a central act the modifications have to be made by the Central Government. However, the collectors and the special land acquisition officers have been asked in the Revenue department Letter No. 35678/R. dated 27.07.01 to submit proposals for acquisition of land in scheduled areas along with copies of resolution of concerned gram sabha/ Gram panchayat
- Grant of prospecting licence or mining lease and grant of concession for exploitation of minor mineral – Amendment made in the Orissa Zilla Parishad Act, 1997 which states that no prospecting licence or mining lease for minor minerals or concession for exploitation of minor minerals shall be granted without the prior recommendation of the Parishad. The Department of Steel and Mines has also been requested for amendment of Orissa Minor Mineral Rules, which is in process.

Thus the state has affectively diluted the spirit of the PESA act. The state has also decided to take an imaginative definition of the term “appropriate level” used in the PESA act. This appropriate level as per the state is the zilla parishad. Most officers of the state government vehemently support their amendments. They said, "in case the central government wanted us to devolve the powers to the Palli sabha, they should have stated that". Similar arguments are put forth for the definition of appropriate level.

## 5.5 STATE RESPONSE TO PESA

*Box 5.1: Provisions of PESA (Act 40 of 1996) and state response – Orissa*

Subject	Central Provision	Orissa Response
Land Acquisition	Gram Sabha or the Panchayat at the appropriate level shall be consulted	<ul style="list-style-type: none"> <li>• Provision diluted by designating the Zilla Parishad as the body, which needs to be consulted. In practice a GO issued to submit proposals for acquisition of lands in scheduled areas along with copies of resolution of gram sabha/ gram panchayat.</li> <li>• <b><i>Land Acquisition Act and Coal Bearing Act need to be amended in their application to the scheduled area of Orissa</i></b></li> </ul>
Grant of prospecting licence or mining lease	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	<ul style="list-style-type: none"> <li>• Provision diluted by designating the Zilla Parishad as the body which needs to recommend</li> <li>• <b><i>No change in Minor Mineral concession rules</i></b></li> </ul>
Grant of concession for exploitation of minor mineral	Recommendation of Gram Sabha or the gram panchayats at the appropriate level mandatory	<ul style="list-style-type: none"> <li>• Provision diluted by designating the Zilla Parishad as the body which needs to recommend</li> <li>• <b><i>No change in Minor Mineral concession rules</i></b></li> </ul>

In addition to the above changes the State recently passed a Regulation (1 of 2002) termed the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2002 (copy attached as Annexure 8). This regulation has provisions, which are useful for protecting the tribals against land alienation by the Non Tribals. It prohibits all transfers of land from tribals to non-tribals, though it does allow the government to authorize a competent authority to acquire land. The most interesting parts of the regulation are the following ones:

- A member of the Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of un-irrigated land
- Provided further that where it is decided by the competent authority to settle the said property with any person other than a person belonging to a Scheduled Tribe in accordance with the Orissa Government Land Settlement Act, 1962, he shall obtain prior approval of the concerned Gram Panchayat, accorded with the concurrence of the Gram Sasan

Thus this regulation provides for more protection for the tribals and also a provision for consultation with the Gram Sabha in case of transfer of lands to non-tribals. However, it is not clear whether the first clause stated above will be applicable when the government is acquiring land for public purpose. One possible interpretation could be that regulation calls for land to land compensation, such that no tribal who is being displaced is left with less than 2 acres of irrigated or 5 acres of un-irrigated land.

## **5.6 OFFICIAL RESPONSE**

A total of 15 officers and experts belonging to various government departments (both at district and state level) including revenue, mining, tribal welfare and Panchayatiraj were met and discussions held with them.

### ***5.6.1 Mining Related Officers***

The officers mentioned that for major minerals the process of awarding lease starts with prospective lease and then the mining lease is awarded. The applications for major mineral has to be submitted to the state level and for minor it has to be submitted at block level depending on the type of mineral and area on which the lease is being applied for. The post application procedures are followed as per the relevant sections in the Mineral concession rules, 1960 as amended upto 18<sup>th</sup> January, 2000; Orissa minor mineral concession rules 1996, notification department of steels and mines, government of Orissa 14<sup>th</sup> August, 1990. The normal process of awarding a lease as per the official takes around two years.

The officers of the mining department whom we met did not seem to be aware of PESA. After the lease award process the department has to monitor the mining company through the district level officers and deputy director of mines of the concerned districts. The people's institutions are consulted at the Zilla Parishad level prior to giving lease for minor minerals. There is no involvement of People's institutions after the lease. The panchayats are allowed to participate in public hearing before awarding the lease.

The revenue sharing is done as per the Mines and Minerals (Development and Regulation) act Section 9. The revenue is shared between the center and state but not with village. For minor minerals the royalties are collected through the district and block offices of the state government and they come into the state treasury. The officer was not aware of any conflicts in the process of awarding of leases and did not have any specific suggestions to make in relation to the present laws and rules

### ***5.6.2 Land Acquisition Officers***

The officials said that they follow the land acquisition act of the central government. In the case of land acquisition for Coal, the Coal Bearing Areas Act 1957 is what is utilized as the guiding act. The interested party has to approach the revenue department and the application in such case is scrutinized at the state level. When the officials were inquired about the public purpose the officials said that the government has not prescribed any guidelines on public purpose and all acquisitions are as per the Land Acquisition Manual.

One of the officer said that anything that is for public use like irrigation projects, schools etc can be deemed to be public purpose. The officer was however was aware of the contradictions that the usage of public purpose can raise especially with regards to whose public purpose. One of the officers mentioned that they utilize the section 3(f) of the land acquisition amendment act of 1984 as the guiding principle.

In all cases it is the recommendations and survey report of the district collector which decide the relevance of applying the principle of public purpose. On the question regarding what happens in case a project is abandoned after land acquisition the officers mentioned that they were not aware. On rehabilitation and resettlement there are no general guidelines, however separate guidelines exist for irrigation and mining projects in the state of Orissa. From time to time the state also issues GOs on rehabilitation and resettlement. The state has a policy for rehabilitation of displaced persons/families in case mining projects, which provide the following details (detailed policy in Annexure 5):

- Eligibility criteria for rehabilitation benefits – definition of displaced persons, project area
- Definition of family for purpose of rehabilitation
- Procedure of survey and identification of displaced families
- Provision of employment to different categories of displaced persons/ families
- Land for homestead purpose
- Facilities to be extended to homestead less and landless encroachers
- Incentive for timely vacation
- Indexation of rehabilitation grant
- Formulating and monitoring of the rehabilitation plan
- Modification of the policy

On the role of various stakeholders, the officials mentioned that the company has to submit rehabilitation plan before land acquisition can begin. *The villagers are to be consulted but mostly the decisions are being taken by the government officials and they take decisions after consulting elected representatives- Sarpanch and ward members. The consultation with gram sabha has not been done properly as we observed during our discussion with*

*elected representatives of Hemagiri Block in Sundergarh district.* The revenue is generated in the form of compensation paid by the company to the government who distribute it to the villagers. Any balance remaining goes to the state government. This compensation varies from land to land and area to area. The rate also varies from case to case/company to company.

One of the field level officials mentioned that sometimes the biggest problem with the process of land acquisition is the lack of coordination between government officials & communities. The officer felt that to make the communities take a more proactive role in the land acquisition process their awareness on laws & rights should be increased and also they should have adequate knowledge about the land acquisition process, so that unscrupulous elements acting as middleman do not misguide the people.

The officials of the land acquisition department were aware of the PESA act. Most of them said that it did not have serious implications in the process of land acquisition. One of the officers provided the researchers with a copy of the instructions issued by the state government making consultation with the gram sabha/ panchayat mandatory in the schedules areas. In the GO (annexure 6) the land acquisition officers and the collector have been instructed that while “submitting proposals for acquisition of land in scheduled areas, the resolutions passed in the gram sabha or panchayat relating to such acquisition should be sent.”

When asked about the conflicts that have arisen in the process of land acquisition, the officials replied that they are not aware of any conflicts but were of the opinion that the NGOs tend to rake up controversies and issues. With regards to PESA the officials acknowledged that the level of awareness of the people was low and in some cases the government department itself was at fault as the officials were not completely aware of it and were not taking adequate steps to raise the awareness of the people. On specific suggestion related to the land acquisition and PESA the officer opined that the people should be made aware of the law in the scheduled areas.

### **5.6.3 Panchayatiraj Officers**

The state conformity act was promulgated in 1997. Interestingly, one of the officers (at the district level) was completely unaware of the implications of the PESA act on land acquisition and mining lease process. The elections for the village level bodies have been held and the Gram Sabhas have been given the powers in consonance with the Panchayatiraj act. The department as a part of raising awareness of the PESA and its provisions is conducting training programmes through NGOs for elected representatives and regularly conducting awareness meetings and workshops.

The officers felt that the people do not use the present provisions, as they are not fully aware of them and there is a need to make them aware of the same. The initiative of the department to train the elected representatives is part of this effort. One of the officers strongly felt that the appropriate level for land acquisition for development projects should be the district level and not the local village level. This he felt would ensure holistic approach else he said no development would ever happen.

## **5.7 COMMUNITY RESPONSE**

The districts of Sundergarh and Keonjhar were chosen for the field study, with two case studies from each district. Additionally a case study from the Kalahandi district has also been included as the land acquisition is taking place right now and the gram sabha is opposing the same. This case study is presented after the case studies from the districts of Sundergarh and Keonjhar.

### **5.7.1 Background of Districts Selected**

#### **5.7.1.1 Sundergarh**

The district of Sundergarh was formed from the combination of the two former princely states of Gangpur & Bonai on 1st January 1948. Sundergarh occupies the north-western portion of the state and the total area is 9712 square kilometres. As per 1991 census the total population of Sundergarh district was 15.73 lakhs with a literacy rate of 52.97 %. The district comprises of 9 tehsils and 1644 inhabited villages. 50.74 % to the total population

of the district belongs to ST communities. The tribal percentage to total population has been decreasing since the formation of the state. Out of 62 scheduled tribes notified for Orissa state as many as 40 tribes are found in this district. The numerically important tribes are Oran, Munda, Kharia, Kisan, Bhuyan and Gond.

The important minerals of economic value occurring in the district are iron Ore, limestone, dolomite coal & fire clay. Besides, a few other minerals like mica, bauxite, quartz, lead, copper & zinc etc. are also found. The urban population in the district is fairly high at 33% largely due to the large scale industries (including Rourkela steel plant, Orissa industries) and their adjoining townships.

Hemagiri block of tehsil Hemagiri consists of 11 Gram Panchayats having 141 villages spread over 548.36 sq. km. As per 1991 census the population of the block was 66,291. Tribal constitute 46.82% of the population. The rate of literacy is 40% amongst the male and 26% amongst females (as per 1991 census). Coal mining in Hemagiri block displaced 80 households of village Tikilipada and about twenty villages in the periphery area of the mining project are in the process of being displaced.

#### *5.7.1.2 Keonjhar*

Consequent to the integration of the feudatory states of Orissa on the 1st January 1948 the erstwhile princely state of Keonjhar emerged as one of its 13 district with headquarters at Kendujhar gada. It extends over an area of 8303 square km which is 5.33% of the total area of the state. The total population of the district, as per 1991 census, was 13.37 lakhs, of which 44.51% were scheduled tribe. The literacy rate of the district was 36.72%. Administratively the district is divided into seven tehsils, 244 grama panchayats and 2127 villages.

Keonjhar can be divided into two parts - lower Keonjhar and upper Keonjhar. The upper Keonjhar includes Kendhujhar, Champua, Badbil and Telkoi Tehsil which are listed as scheduled area, where as lower Keonjhar is not listed as scheduled area. The district is bestowed with extensive deposits of Iron Ore, Manganese Ore, Chromite and a few other

minor mineral occurrences. More than 90% of Orissa's production of manganese ore comes from the Kendujhar-Bonai area. The manganese ore deposits are scattered over an area of 500 sq. km. There are about 200 individual deposits of different dimensions most of which are under active exploitation.

*Banspal block:* Banspal block spread over 1191.07 sq. km., consists of nineteen Gram Panchayats and 163 villages. The literacy rate of the block is 17.72 %, where as the female literacy rate is 6.92%. Despite it rich natural resources the condition of the people is quite poor with more than 84% below poverty line. As per 1991 census the tribal population of the block was 79.28% of the total population. Bhuyan and Juang are the major tribal groups of the block.

About 80% people of this block depend on agriculture but due to lack of irrigation facilities the agricultural production is low. Mining operation in this block dates back to early eighties when the Orissa mining corporation and a number of other private mining companies started their operations in the district. Since then the mines have taken up the cultivable land of the villagers. But due to apathy and negligence of the government the villagers have not got any compensation. This has largely happened because they don't have the "patta" for their land despite cultivating it for decades. They are also losing their livelihoods and are becoming more and more dependent on others. The economic strength of these people is decreasing day by day. Whatever cultivable land remains around the project site has also been losing its fertility due to mining dumping and over burden.

### ***5.7.2 Case Study of Village Tikilipada***

*Village: Tikilipada*  
*Block: Hemagiri*

*Panchayat: Sumura*  
*District: Sundergarh*

#### ***5.7.2.1 Background***

Tikilipada was situated on the bank of the river Basundhara which flows from Madhya Pradesh and joins Mahanadi at Jharsuguda. Tikilipada was home to 183 (Census 1991) households belonging to the Kharia, Bhuyan, Guuda, Dhoba, Barik and Kumbhar communities. Majority of the villagers were tribals and mostly dependent on agriculture

and forest related activities. All most all the villagers have land but due to lack of land settlement and survey it was found that the land records and actual possession has mismatched in many cases. The land was primarily patta lands, banjar and also some Podu was done by some of the families. The main crops grown were - maize, rice, pulses and the typical yields were rice - 7 quintals per hectare and green gram around 2 quintal per hectare. There were no irrigation facilities available in the village and all the agriculture was rain fed.

The villagers supplement their incomes through collecting forest produce including wood and Kendu leaf. However, the income on the forest produce is low as the local dealer cheats the tribals. Amongst the common property resources available in the village include river (for water), grazing land and forest. The basic amenities available are drinking water, school, road and electricity.

The name of the company for whom the land was acquired is Mahanadi Coal Fields limited which came into existence in the year 1992, as one of the subsidiary company of Coal India under Ministry of Mines & Mineral, Government of India. Exploration of coal started from 1997 in Hemagiri block. The name of the project is Basundhara East open cast project.

#### *5.7.2.2 Land Acquisition*

The land acquisition has taken place under Coal bearing Areas (Acquisition and development) Act, 1957. The publication of preliminary notification under section 4(1) was done in 1987 and that is when the villagers first heard of the project. The declaration for intended acquisition under Section 6(1) was done in 1989 and this was the time when the government and also the company officials first held their meeting with the villagers. The company in its meetings in the village promised the villagers that they would get houses and jobs.

Public notice and individual notices to persons interested to file their claims for compensation under Section 9 was done in 1989. The land acquisition proceedings started

in 1989. The villagers were not aware of the amount of land allotted to the company and whose lands would be taken over. The villagers did raise objections against the land acquisition but only orally and not in written form. However there was no response to these oral objections either by the government, company or the local politicians.

The company has presently acquired various types of lands including government, private and common. The common properties like the wastelands, grazing lands, forest lands and even the road was acquired. The government lands were mainly D-patta lands and wastelands.

The rehabilitation was started in 1995. The company has started operation, but only at half capacity. The rehabilitation is however not yet complete. The company is trying to persuade the other villagers also to get rehabilitated and this is leading to some conflicts, as the people are demanding more compensation, more jobs and facilities. Meanwhile, the company has illegally encroached on land not acquired for the purpose and is using it as dumping grounds, tailings disposal, road laying and parking trucks. However as the villagers are unaware of the extent of land acquired they have not been able to raise any objections to this illegal encroachment.

Basundhara Nagar is the name of the rehabilitation colony built to rehabilitate the families displaced by coal mining. The colony has built by Mahanadi coalfields limited. Each family was allotted 10 decimal of land with support for building. Only half of the villagers have been rehabilitated. Even those who were given houses were not consulted, prior to allotting them the houses. The people were not given any choice in terms of lands plots, it was take or leave policy. The houses are worse than the original ones they were living in and they are living in the houses due to lack of any choice.

The newly settled villages do not have sufficient sources of water, forests and other common resources previously existing in the village. The colony has school, post office, training centers like ITI and tailoring. However, the colony does not have drinking water

and sanitation facilities. The people are facing lot of problem in the summer seasons when the tube wells and dug wells are drying up.

The compensation was paid as per government rate existing in 1987. They cannot buy the land from the compensation money because compensation rate was much less than local market rate of available land. Some of the villagers who were given cash have spent it on building houses and rest on consumption expenses. None of the villagers have been able to save any of the money they got and now they are in dire straits as there is no cultivation land available.

#### *5.7.2.3 People's Experiences*

The socio-cultural life of the community has been shifted from an agricultural based one to market economy. While previously their cultivable land was providing them with some of their yearly food requirements, they are now forced to buy everything from the market on cash basis. The women of the displaced family are suffering most because they have lost their work in the fields. Only one member of the family has got a job as a labourer or as grade worker. The whole family has to depend upon the earning of the single member.

Most of the original inhabitants are working as mining labour. Thus the villagers from being agriculturists have now been reduced to being daily wage employees in the company. Around 40 men and 10 women of the original village are working in the mines. The work is as manual labour under a contractor and not even the company. Around 200 outsiders are holding jobs in the company and this has increased the local population. The women are the worst affected as they do not find any work in the new economic system. Most have become more dependent on men. The women have to either work as mine labour or they will have no work.

The new forms of entertainment which have come into the village include - video parlours, liquor and gambling and they are more a form of social evil than entertainment. Social evils like eve teasing, harassment of women, unwed motherhood has increased due to the influx of the outsiders. Even those working in the mines are harassed by the contractor on

the issue of wages. Once again it is the women who get the worst treatment here. Bronchitis and malaria have increased after the company came into the area. The extent of indebtedness has also gone up as the village gone from agriculture based economy to market based economy. There are no ancillary industries or trades, which have come up after the company. Thus the employment opportunities for the local inhabitants have not really gone up as originally promised. One saving grace has been the increase in the literacy levels amongst the boys and girls of the village.

#### *5.7.2.4 People's Reaction*

The villagers are not aware of PESA or its provisions and the gram sabha is not organized in their villages. On the issue of whether the company has improved their lives the villagers felt that the quality of life has improved on some counts like access to modern amenities especially education, though their livelihood source and options has been severely curtailed.

While the land in the village of Tikilapada was acquired prior to PESA, there are around twenty more villages in the area from which land has to be acquired. The local land acquisition officer told the team that the due process as per the PESA is being followed. However given the low awareness of the PESA act amongst the villagers it is open to question how useful the consultation process really would be.

### ***5.7.3 Case Study of Village Dengula***

*Village: Dengula*  
*Block: Koira*

*Panchayat: Dengula*  
*District: Sundergarh*

#### *5.7.3.1 Background*

The village of Dengula has a population of 941 (Census 1991). The main tribal community in the village is Bhuyan, with most of the villagers having either patta lands or doing podu cultivation. The main crops grown are rice and black gram. There are no irrigation facilities available and the villagers to supplement their incomes also collect forest produce like sale leaf. There are no common properties in the village to speak of and the basic

amenities include a school, village road, water and electricity. The tribals follow their traditional customs of festivals and their traditional livelihood is well integrated with the forests and the natural resources available to them in their village.

#### *5.7.3.2 Land Acquisition and Mining*

This village is affected by the mining operations of the various quarries cum crushing units located around 1/2 km from the village. There are more than 30 mining companies in the Koida Block including the Jindals, TISCO and SAIL. The main mining activity in the vicinity of this village is quarrying of stone to be used to make chips for building and roadwork purpose. There was no land acquisition as the quarry units were available on the village common lands. For the few units on private land the contractors undertook individual negotiations with the land owners. In most cases the lands were in the hands of large farmers who did not mind losing a few acres. In some places mining and quarry has started after the PESA act came into force, however the state amendment which gives the Zilla Parishad the right to be consulted is acting against the interest of the local villagers. The Zilla Parishad is controlled by the powerful political parties, which also have a hand in the quarry operations.

#### *5.7.3.3 People's Experiences*

The quarry activity is destroying the forest in the area and the villagers are no more able to access the same for collecting produce and enhance their incomes. The operations of the mining companies have also dried up the Karro stream (this is the area where the Koel Karro River is born). This is creating additional problems as the villagers are no longer able to irrigate their fields and their agricultural production has gone down. Also some of the villagers are facing a problem as the dust from the crushing units also destroys their crops. The villagers are slowly being cut off from all their sources of livelihood and driven to poverty.

The landless villagers (and even some of the landed ones) are now forced to work as daily wage labourers in the quarry and crushing units. Even the women and in some cases children have to work in the quarries. They are facing extreme forms of harassment and

sometimes sexual exploitation at the hands of quarry owners and other workers. Dust levels are also very high and the Orissa Pollution board has identified this area as an area of high dust pollution. Unfortunately the pollution board is also quite toothless and is unable to do anything to ameliorate the situation for the tribals.

#### *5.7.3.4 People's Reaction*

The gram sabha is not being held regularly and even when it is held the discussions border only on the welfare and development programmes of the village without getting into any of the issues. They are considered as a mere formality. The Sarpanch of the village is in the hands of the political parties and does not take any strong stand. The village leadership is failing them.

In the recent past the trade unions in the area are becoming active and working on behalf of the problems of the people. CITU is active in the area and is organising the people. The people conducted a road block on one of the main roads to get their voice heard. The conditions of the roads are also quite pathetic. This is partly due to the policy of the government, which encourages the mining companies to build the roads, and then the state takes over the road for maintenance.

#### **5.7.4 Case Study of Village Upparjagar**

*Village: Upparjagar  
Block: Banspal*

*Panchayat: Urmunda  
District: Keonjhar*

##### *5.7.4.1 Background*

The village Upparjagar is situated in the hilly terrain of Gandhamardan valley. The 138 households of the village belong primarily to the Bhunia and Munda tribal communities. Most of them depend upon cultivation and forest produce for survival. One of the main sources of income for the tribal women comes from the sale of sal leaves, which provides them with a daily earning of Rs. 25. Other forest products provide seasonal income. In terms of common properties the village has a river (for agriculture, drinking water and domestic use), tube wells (for drinking water), school, youth club, village forest and

stream. The village has one tube well but it is not sufficient and also does not function in summer.

Orissa Mining Corporation (OMC) is a public sector company of Government of Orissa, which came into existence in 1985. RTZ, a multinational mining company is going for a joint venture with OMC for iron ore mining. There are also a number of private mining companies engaged in mining operation in Banspal block including B. D. Agarwal which is exploring Iron Ore in Urumunda and M/s Gandhamardan Sponge, exploring Iron Ore at Putuli Pani.

#### *5.7.4.2 Land Acquisition and Mining*

The situation in the village is quite similar to that in the large parts of the districts. Land survey settlement has not been done in this region and hence most of the families do not have proper land documents (*patta*) for their own homes despite living there since decades. The project started eviction and demolishing the houses even before the villagers were given any rehabilitation. This forced the villagers who were evicted, to encroach new lands near the project area itself. For those with "patta" the local government officials informally consulted them in a meeting, followed by a feast where the participants were made to put their signature without informing them about the details. They are still awaiting their compensation. The Sarpanch of Urumunda gram panchayat Mr. Manga Naik mentioned that some dispute cases are still pending at district magistrate court Keonjhar.

The common property resources including the wastelands, forest, were also acquired for the project. The land acquisition is over and operations have started, however the rehabilitation is incomplete. The villagers were promised jobs and compensation, which some of them are yet to receive. Some of the villagers did raise objections to the land acquisition but only orally. The villagers were extremely disappointed with the companies as they were made to believe that new facilities would be created for them and they can have a better life. New facilities have been generated but only for the project staff.

The mining companies have been using the land in scheduled areas for mining and ancillary activities without consulting the Gram Sabha/ Panchayat despite the government order of 27/7/2001. In some places the mining companies are not directly displacing the villagers but are creating a situation whereby the villagers have little choice but to leave. Many of the families do not have land patta so they cannot legally claim for compensation.

#### *5.7.4.3 People's Experiences*

Since the mining has started there have been a lot of outsiders who have come and settled in their village. Prior to mining there were about 40 households but after mining the number has gone up to more than 300. Most of the original inhabitants are working as manual labour. Only one person is working as a blasting person (skilled position - Rs. 6000 per month), the rest are working as manual labour (all on contract - Rs. 50 per day). All the officials & technicians are from outside the village.

The new forms of entertainment created due to the project are: gambling, liquor shops, video parlours. This has also given rise to new forms of social evils including addiction to alcohol, harassment of women and increase in the number of unwed mothers. The frequency of health problems like malaria, T.B, dust related problems have also gone up since the mining activities started.

The villagers mentioned that the oppression of the OMC was increasing day by day. OMC has been illegally dumping the over burden on cultivatable land, and one of them (who is also a ward member) has filed a case against OMC with the district magistrate of Keonjhar. Prior to the mining activities being initiated in their village rice, corn, colocasia, pulse, onion etc. were cultivated in the fields, but after mining these cultivations are not taking place because of pollution and scarcity of water. The water from the "Thousila canal" and "Matha Jharana" irrigated the agriculture lands, but OMC is taking the water from these two canals, which is causing scarcity of water for the agricultural fields. Illegal dumping by mines also blocks the flow of the water to the cultivable land causing scarcity of water for cultivation. This is driving the people to poverty.

Basudev Senapati, working as blasting man in the mines said that due to the blasting activities the ground water level is also decreasing day by day. The elephants living in the nearby jungle are also becoming unsettled and coming to the villages and destroying the houses and cultivation.

#### *5.7.4.4 People's Reaction*

The two subdivisions, Kendujhar and Champua have been declared as Scheduled area with effect from 31<sup>st</sup> December 1977 under the scheduled area constitution order no-109. Transfer of land of the areas belonging to the tribals is being regulated under the provisions of Regulation 2 of 1956. The government of Orissa has issued orders on 27/7/01 which states that for land acquisition in scheduled areas there should be a mandatory consultation with Gram Sabha / panchayat.

Despite all the safeguards stated above the rights of the villagers are being violated with impunity. Based on discussions with various cross sections of the society it appeared that the people are not aware of PESA. Even the elected representatives of Panchayatiraj institutions do not have awareness about constitutional and legal rights for tribals. Worst of all, many of the Government orders have not reached the field units, like the government order relating to land acquisition in scheduled area. It would appear that the GOs are being issued for mere publicity or the field units are deliberately ignoring them.

#### **5.7.5 Case Study of Village Putuli Pani**

*Village: Putuli Pani*  
*Block: Bansapal*

*Panchayat:*  
*District: Keonjhar*

##### *5.7.5.1 Background*

Putuli Pani is dominated by tribals belonging to the Bhuyan community. The village land is either patta land or encroached by the villagers. Maize, rice and black gram are the main crops grown in the village, with the yields being lower than the state average, as there are hardly any irrigation facilities available anymore. The villagers used to collect various

forest produce including amla, harida, honey, wood and sal leaf and sell whatever they could to supplement their meagre incomes.

#### *5.7.5.2 Land Acquisition and Mining*

Almost ten years back major quarrying and crushing operations started around their village. The operations were started in the forest area surrounding the village and at a distance of 1/2 km, from the village. The government gave the lease on the forest area to private non tribal individuals from outside the area. The land was acquired from the forest department as per the procedure laid down in the State Minor Mineral Concession rules. The villagers were not consulted and did not know about the proposed operations till the operations actually started. Presently, there are more than 10 quarrying and crushing units operating in the area. The stone that is being crushed is used for road work and building purposes. There are a couple of large units belonging to Jindals and OMC also operating in the area.

The revenue that accrues from the mining leases is not shared with the villagers and all of it goes to the State. The mining companies which are undertaking the quarrying operations are not doing any development or welfare activities in the village. The companies are mostly controlled by the politically powerful, who are themselves non tribals and from outside the region.

#### *5.7.5.3 People's Experiences*

Since the crushing units have started operating in the area the respiratory problems due to the dust pollution have also gone up. The blasting operations also create problems as some of the stones fall on their houses and weaken the walls of their houses. Most of the villagers find employment in the quarry and crushing units. Most of the workers in the units are women, young girls and youth (15-17 age groups). They manually crush some of the stones and also feed the machine, which powders the stones. All of them work as daily wage labourers without any access to facilities in case of accidents.

#### *5.7.5.4 People's Reaction*

Gobinda Munda, a worker at one of the crushers said that most of the people of their village are mining labourers. They return home in the evening and take country liquor and go to the bed. There is no time for these people to think about their future, their rights and about their children. This acts as a major impediment in the villagers collectively acting and demanding their rights. However, the villagers are slowly mobilising themselves and opposing the crushing units primarily on the following grounds

- Destruction of their forests
- The problems caused due to the blasting operations.

The villagers are trying to form a union and respond to the pressure of the politically powerful quarry owners.

There is no question of land acquisition in this area, and as per the government officials as the mining is taking place in the forest area, the village panchayat does not have jurisdiction on it and hence the clause of consultation as under PESA also does not apply. However the fact is that the villagers are getting affected and have no say on what is happening in their lives. Also they are losing access to the forests which they have been traditionally using for their livelihoods and domestic purposes. The typical refrain of the officials seems to be that the tribals have anyway denuded the forests by Podu cultivation and the forests and lands are wasted, so how does it matter if the state also generates revenue by selling quarry leases.

## **5.8 SPECIAL CASE STUDY OF SOUTHERN ORISSA**

### **5.8.1 Situational Analysis – Southern Orissa**

The Koraput, Bolangir and Kalahandi region (KBK) of Orissa has been in the limelight for its abysmal poverty, "starvation" deaths, migration, child sale, bondage etc. The government has spent several millions of rupees as special allocation to the region to alleviate the situation, without much change in the real situation. The various industrial/Development interventions in these districts like NALCO, Hydel Power Projects (Indrabati and Kolab), Hindustan Aeronautics limited, JK & SEVA paper mills, IMFA,

Mangalam timber (a Birla company) have also not helped the people much, on the contrary the people are still feeling the pinch of industrialization.

This section of the Eastern Ghats with a predominant tribal population and forests has been found to be rich in Bauxite reserves. Some of the companies which have expressed in interest in the region are listed in the following table:

*Table 5.4: Proposed mining companies in the Rayagada, Koraput and Kalahandi districts - Orissa*

<b>Name of the company</b>	<b>Hills</b>	<b>Area</b>	<b>District</b>
UAIL (Indal, Birla, Alcan)	Baphlimali	Kashipur	Rayagada
NALCO	Panchpatmali	Damanjodi	Koraput
Hindalco (Birla)	Kodingamali	Laxmipur, Kashipur	Koraput, Rayagada
Hindalco (Birla)	Kodingamali	Pottangi	Koraput
L&T	Sijumali, Kutrumali	Kashipur, T Rampur	Rayagada, Kalahandi
Oswal	Sasubohumali	Kashipur	Rayagada
Sterlite	Pasangmali	Kashipur	Rayagada
Sterlite	Niyamgiri	Lanjigarh	Kalahandi

All these companies (except NALCO which is already functional) are planning to set up their refinery plants, smelter plants and Captive power plants (coal based) and have already acquired roughly 50000 acres of land. The tribals have already experienced the hazards and negative affects of mining in the case of NALCO – both at Damanjodi (refinery plant and mining site) and Angul (smelting plant). So the tribals in all these places have been protesting against the companies coming into their area. This has given arise to various people's movement and numerous peaceful protests and dharnas. In 2000 December three tribals lost their lives in one such protest meeting, which was attacked by the local police at the behest of the company officials and other interested parties.

The present case deals with Lanjigarh area, where the villagers are opposing the Sterlite project.

### **5.8.2 *Situational Analysis – Project Area***

The Niyamgiri hill forests are situated on the border of Kalahandi and Rayagada districts. Niyamgiri hill is spread over in three blocks (Muniguda, Bissamcuttack and Kalyansinghpur) of Rayagada and two blocks (Lanjigarh and Thuamul Rampur) of Kalahandi. The forest is origin to two historical south flowing rivers (Vansdhara and Nagabali) both of which meet in the Bay of Bengal in Andhra Pradesh. Over thirty perennial streams which emerge from the hills support a wide range of flora and fauna. For the local communities Niyamgiri is considered as the abode of God.

Sterlite Industries India Limited first came forward to extract bauxite in the Niyamgiri Hills from the Kalahandi district side. Some of the major factors which influenced this decision were prospective availability of coal and power in the state, the South Eastern Railway line in the area, availability of the ore. The protests of the tribals in the Rayagada against the mining company of Utkal Alumni International Limited have been going on for more than ten years. Sterlite apparently, figured that it would be very difficult in the present circumstances to acquire land in that region and hence is trying to acquire land in the Lanjigarh area. As per the records the project is expected to cost Rs. 4500 crores and will be used for setting up a 10 lakh tonnes alumina refinery.

### **5.8.3 *Background of the Village***

The village has a bore well as the only source of drinking water. There is an anganwadi centre and also a school around ½ a kilometer away. The forests are located around 1km from the village and are useful for the villagers for firewood and for gaining employment when some earth work is being done. The village of Turiguda has around 38 households and is organised in a typical fashion, with two rows of houses facing each other. The houses in each row share a wall and there is a small front yard and a back yard. Each dwelling has typically two rooms and there is hardly any difference in the different dwelling units. Each family has around 6-7 acres of land and is completely dependent on agriculture for their livelihood. The women folk of the family also help in the agriculture activities.

#### 5.8.4 Land Acquisition

As mentioned the land is being acquired on behalf of Sterlite Industrial India Limited, which is expected to set up an alumina refinery plant costing Rs. 4500 crores. The land is being acquired by the Industrial Infrastructure Development Corporation, a state government enterprise. There are a total of 12 villages which will be affected by the mining activities. They fall in two different panchayats. The details are provided in the following table. Thus a total of 302 families will be affected by the project. What is termed as government land in the table is also somewhat of a misnomer, as in most cases this is the land which is being used by the villagers as common property resource or in some cases has been given to the land less for enjoyment.

*Table 5.5: Proposed villages to be displaced in the Sterlite Bauxite Project*

Panchayat	Village	Total Private land	Total Government Land	Private land to be acquired	Government land to be acquired	Households to be shifted	Total Affected households
Bathilima	Kinnari	128.67	44.84	98.99	34.12	35	18
Bathilima	Kopaguda	139.79	54.62	88.50	29.68	25	12
Bathilima	Bellamba	132.52	26.40	33.71	17.10		29
Bathilima	Boringpoddar	327.90	247.20	234.15	188.23		39
Bathilima	Turiguda	234.13	151.38	212.22	124.80		33
Lanjigarh	Bundel	164.10	46.44	63.14	18.95		12
Lanjigarh	Borohota	88.62	63.61	78.27	44.52		22
Lanjigarh	Kottadwar	188.18	212.27	114.30	55.02		48
Lanjigarh	Bondoguda	80.78	14.71	74.28	13.87		35
Lanjigarh	Sindbahal	148.04	25.97	87.40	11.41		25
Lanjigarh	Basantpoda	92.75	10.32	24.45	1.39		29
Lanjigarh	Jaganathpur	516.85	469.23		141.04		
Two panchayats	Twelve villages	2242.33	1366.99	1109.41	680.13	60	302

As can be seen the land is being acquired in 12 villages. Of the 12 around 6 had been surveyed by January 2003. Since the issue has arisen, the company officials, block development officers, district collector and even the minister of Tribal Welfare have visited the villages. The survey officials have been informing the villagers that they are surveying to assess the extent of land and also the various trees on the lands.

The villagers did not receive any individual notices and got to know about the project when the collector called for a “Gram Sabha”. As per the Orissa act the gram sabha includes all the villagers in the panchayat, which in this case amounts to almost 5000 villagers. At the meeting none of the villagers from the 12 villages signed on the “resolution”, though the “Gram Sabha” itself seems to have approved the project. This is at best a sham, as it would be almost impossible to record any dissent in such a large gathering, which has sufficient show of state power in terms of police force and even “hired goons” as per the villagers.

Some of the villagers received their individual notices after the “gram sabha” and the notices were dated 6<sup>th</sup> June, 2002. The notice stated that those who would lose land will receive the market value of the land + 30% more, which the villagers computed would come to around Rs. 11000 per acre on an average. Further, those who would lose their houses they will be provided 10 cents of land in another village (Jaganathpur) or provided Rs. 50000 as cash compensation. The villagers have also been informed that those who are educated will be provided jobs. The villagers were expected to send in their written objections by the 22<sup>nd</sup> of June 2002. The Gram Sabha was organised on the 26<sup>th</sup> of June 2002.

#### ***5.8.5 People’s Experiences and Reactions***

The first time that the villagers heard of the Sterlite project was on 5<sup>th</sup> January 2002 when one of the state ministers mentioned about it in his meeting. The information provided was very scanty and all they knew was that some industrial project was to come to their area. They did not have any specific idea of the project, villages to be affected, which company, what industry etc.

The next time the villagers heard about the project was when the district collector of Kalahandi issued a notification to hold a gram sabha in the “proposed” mining areas which fall under Bathilima and Lanjigarh panchayat (Turiguda falls in the former panchayat). The meeting was fixed for the 26<sup>th</sup> of June 2002 for both the panchayats. Adsi Majhi (a resident of Turiguda village) said “Since the notification was issued the district collector moved around their area with the police force in order to generate fear amongst the villagers”. On the date of the Gram Sabha itself, the collector conducted the Sabhas in Bathilima and

Lanjigarh Panchayat in the presence of police force, company officials and a lot of people from outside the area.

This incident triggered the tribal and dalit communities to organise themselves against the government decision to mine Niyamgiri hills. They organised several meetings of the village groups in Lanjigarh, Bathilima Gram Panchayat. There are a total of 12 villages, which will be evicted due to the mining, initially. The people have formed a Niyamgiri Surakshya Abhiyan (NSA) against mining. Women members have also been incorporated in the NSA. They have decided to not cooperate with the survey work being undertaken by the forest and revenue officials. They invited the Revenue divisional Commissioner to their meetings, but he refused to attend.

The villagers are extremely vehement about their objection to the project. They felt that the whole show of “Gram Sabha” was a sham and it was merely done to cover up the extent of dissent against the project. The villagers opined that the Palli sabha is the right body to make such decisions and not the “Gram Sabha”. The Palli sabha is the customary and traditional body of the tribals of that region. They felt that the villages who are not going to be affected (in terms of direct displacement) are the ones who have signed on the “gram sabha” resolution and none of the villagers of the 12 villages who are being affected have signed. One of the villagers felt that the state might as well kill them than displace them from their lands and forests, which is like a mother to them. Other than these emotional arguments the villagers appeared to be peeved with the way the process of land acquisition was being thrust upon them.

#### **5.8.6 Present Status**

The Orissa Pollution Control Board organised a public hearing at Muniguda on 17-3-2003 for the above project. Around 700 Dangaria Kandhas-a primitive tribe assembled along with a few local activists. The local goondas and the police did not allow “this PUBLIC” to place their objections before the panel. The hearing was in a small room of the local PWD IB and nobody was allowed except the pro-company people. A few activists managed to go inside and when they were raising their objections, the locally hired goons did not allow them to speak and a few panelists were supporting the goons. The ADM closed the hearing in a hurry at 12.30 PM. Many people who came after that could not file their objections.

Eleven affidavits and hundreds of petitions were given to the ADM [he was forced to come to the assembled tribals outside] objecting to the establishment of the mining and refinery plant. The public hearing was a fiasco and the tribals declared – *jana birodhi jana sunani – murdabad murdabad* (Anti people public hearing-down down).

The basic premise of the affidavits which were submitted was:

- The EIA of the said project is neither available from Parsali G P office nor from any public institution.
- The Rayagada and Kalahandi districts come under schedule-V area of the constitution and any type of tribal land alienation is strictly prohibited and the decision of the Supreme Court [Samatha vs. State of AP and others] is applicable.
- The OSATIP Act has been amended twice with an objective not to make the tribal people landless.
- The setting up of the mining and Alumina Refinery Plant by Sterlite Industries(India) Ltd will create deforestation of wild forest, displacement of primitive tribes such as Dangaria Kandha and Kutia Kandha.
- The villagers are ignorant of setting up of this large unit until date and even those who are informed; strongly oppose the establishment of the aforesaid plant.
- If the Alumina Unit is established, people, mostly tribals will be landless and deprived of long-term livelihood and it will cause socio-economic and ecological disaster.
- This is a Schedule V area and for alienation of the tribal lands, prior permission is needed from the competent authority under regulation 2/56 in a proper manner and any kind of alienation of land violates the norm of 5<sup>th</sup> schedule of our constitution and at the same time, prior permission from the Palli Sabha of concerned Gram Panchayat is needed as per law.
- Any kind of forceful establishment of mining and Alumina Plant in this area is against the protection of Human Rights.
- Establishment of Alumina Plant will cause water shortage, pollution of Vansdhara and Nagabali water basins.
- As there is no state mining policy yet in Orissa, the establishment of the aforesaid unit at the cost of primitive tribes and environment of this area should not be allowed.
- The illiteracy percentage of women in this area is one of the highest in the country. Employment opportunity will be nil and establishment of the mining and Alumina Refinery Plant will severely violate women rights.

After the public hearing on 21st March, 2003 the officials of the Sterlite Industry came for survey work to the villages of Bathilima gram panchayat and the local villagers strongly resisted this move and also did not allow the survey to take place. On 23rd march, the company officials (by the name of Dilip Mukherjee) filed an FIR against the villagers on grounds of "attempt to murder". On April 1st, a local activist of the Kalahandi District Farmers Association was severely beaten up by local goons when he was waiting at the bus stand in Lanjigarh. The police instead of arresting the goons arrested the activist and booked a case of "anti-social element" on him. The villagers got together and went to the police station the next day to protest against the arrest and they were also virtually chased out of the place by the local goons who came with sticks and crickets bats. Some of the women and men were injured and the police also chased them away, so that they could not communicate the incident to anyone. Unfortunately the local press persons also blacked out the incident and the local government officials are also bent on getting the project to this area at any cost.

#### **5.8.7 Analysis**

The Lanjigarh case is an interesting one as it appears that most of the villagers are opposed to the project and despite the various acts (and provisions in them) the people did not seem to have a say in the process of land acquisition and mining. It also highlights the practical problem of how the definition of a gram sabha is being almost misused by the government officials to push through a project, which obviously the state government is backing against the interests of the tribals. The right of self determination is completely sidelined. The state modifications in the act have made the provisions impotent.

In addition to the land acquisition process it is also clear that the villagers need more information about the project including environmental management plans, EIA etc., to arrive at a more informed decision. The lack of transparency (despite the provisions of the PESA) is another glaring aspect of the Lanjigarh case. The district collector and the District Police superintendent have proclaimed that they those who oppose Sterlite are antisocial and also that they would get the project to the district before they leave the district. When senior officials have such a narrow focus it is hard to see how PESA can be affectively implemented.

## ***CHAPTER 6 – FINDINGS AND RECOMMENDATIONS***

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*The previous chapters have provided a narrative description of the state legislations, various field experiences and the data collected as part of the study. The present chapter attempts to summarize the findings and responds specifically to the objectives of the study.*

### **6.1 BACKGROUND**

It is an acknowledged fact that the scheduled areas of India have vast resources of minerals and forests. These areas also happen to be inhabited by the tribals, who have been recognized as a marginalized section in the society with a unique culture and heritage and accordingly various provisions have been made in the constitution itself, to protect them from exploitation and to allow them to preserve their culture and way of life. The various development initiatives of India since independence have unfortunately ended up marginalizing the tribals even more. The Planning commission in their draft approach paper to the Tenth Five Year Plan (2002-2007) states: *“Post independence, the requirements of planned development brought with them the spectre of dams, mines, industries and roads on tribal lands. With these came the concomitant processes of displacement, both literal and metaphorical – as tribal institutions and practices were forced into uneasy existence with or gave way to market or forward state institutions”*

The Mid term appraisal document of the planning commission for the ninth five year plan (October 2000) goes on to state that *“Tribal land alienation is the most important cause of the pauperization of tribals rendering an economic situation, extremely vulnerable at the best of times, even more precarious.”*

The glaring fact that almost 10% of the total tribals in India have been displaced at one point or the other in the last 50 years with 65% of those displaced yet to be rehabilitated points to the price that they are paying for development. Displacement has disrupted their traditional structures of village management and administration, livelihoods and is also eroding their cultural heritage.

Various government departments including the mining department have acknowledged that there is a need to ensure that the tribals should not pay the price of development and steps should be taken to make the development more participatory. This can happen when the tribals have the power to decide what is best for them based on which they define the development agenda. The PESA act is one such step in this process to safeguard and also to involve the tribals (through their own traditional structures) in development. The act has a lot of provisions providing the tribals more control on their natural resources and also more say in the welfare and development activities taking place in their villages.

Three such provisions which impinge directly on their right to self determination and affect their livelihoods are those which relate to land acquisition (Section 4(i)) and mining (Section 4(k) and 4(l)). All three provisions in the Central Act provide for a consultation (recommendation) with the gram sabha prior to acquiring land or giving a mining lease or concession.

## **6.2 PESA AND LAND ACQUISITION**

The PESA Act was born out of the recommendations of the Bhuria committee. The committee had specifically recommended (emphasis added):

*“The Land Acquisition Act which enables the State to take over any land for “a public Purpose”, ownership, does not take cognizance of the customary regulation of common property resources in tribal areas. Among many tribal communities, land and such other natural resources are owned jointly by the community and its use by individuals is sanctioned by the community. In not recognizing this basic principle in tribal areas, the Land Acquisition Act is premised on unrealistic grounds. The basic lacunae in the Act have to be removed. The **consent** of the local village community should be obligatory. The rehabilitation package should be obligatory. The rehabilitation package should be operated with the **consent** of the local, village community, viable and acceptable package of livelihoods should be offered as a means of rehabilitation of the affected communities. In other words, land should be acquired with the consent of the Gram Sabha making provision for alternative livelihood for the concerned families acceptable to them.”*

Land acquisition in India takes place through the land acquisition act promulgated by the colonial rulers suitable for their purposes. Unfortunately, the Indian government even after independence continued with the same laws and rules. The basic premise of the act is that of eminent domain; simplistically put the state owns everything. Given this the final PESA act had to water down the recommendation of the Bhuria committee and the word consent was replaced by consult.

The main acts under which land is acquired for mining purposes in India are the following:

- 1) Land Acquisition Act of 1894
- 2) Coal Bearing Areas (Acquisition and Development) Act, 1957

**As per the findings of the study, these acts have not been amended to reflect the provisions in the PESA Act.** The Ministry of Rural Development, Government of India has however issued executive orders describing the process of consultation for the purpose of land acquisition in scheduled areas. This requires that all proposals for acquiring land in scheduled areas should include a letter of consent in the form of a gram sabha resolution. In case the gram sabha does not consent, then their reasons for dissent should also be included. The District collector then has the right to call for a tripartite meeting to resolve the issue if possible. Finally, in case the issue remains unresolved the collector has the power to proceed with the acquisition, as per the LA act. The state government is expected to maintain a register showing year wise land acquired in schedule V areas in different districts.

Sadly, none of the state governments visited (Chattisgarh, Orissa and Rajasthan)<sup>17</sup> are following any of the above in the spirit in which they were formulated. Needless to say registers are neither being maintained nor any annual report being published. The state governments by and large follow the Central Act and the field level units visited do not seem to have received the instructions issued from the Ministry of Rural Development.

The provisions of the PESA act despite being watered down due to the eminent domain “factor” are still quite powerful and provide a scope for empowerment of the tribals. The provision in the act talks both about the land acquisition process and the rehabilitation and resettlement process and attempts to define a role for the gram sabha in both these stages. The land acquisition act of 1894 does not say much about the rehabilitation and resettlement process and that also needs to be corrected. A draft bill for resettlement and rehabilitation has been floating around for the past few years without much action.

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<sup>17</sup> See Annexure 7 for extent of devolution of powers to PRIs in these states

Another inhibiting factor in ensuring that the devolution of power percolates down is the reluctance of the state governments to undertake the devolution in the spirit of the act. They have taken the literal meaning of the provisions and modified them to suit their needs. As stated by Mr. NC Saxena in a paper on panchayats

*“The spirit behind the provisions regarding mandatory consultation with gram sabha or panchayat at the appropriate levels in respect to subjects like acquisition of land, grant of mineral leases etc., is that the tribals may own land but they have no control over it and are not able to put it to productive use, they have generally been outmaneuvered and are losing control over natural resources. In view of this, to safeguard their interests, the consent of the local tribals at the village has been obligatory. Further, land to be acquired, mineral resources, water bodies etc may fall within the jurisdiction of more than one village/block/district. Therefore to cover this aspect the phrase “Panchayats at the appropriate levels” has been under in the central act.”*

Rajasthan has modified the provisions pertaining to Section 4(i) by adding the caveat of “as may be prescribed by the state”. Orissa has gone a step further and decided that the appropriate level in their state is the zilla parishad and given the right of consultation to that tier of the Panchayatiraj system. Chattisgarh by far has done a better job in terms of devolution, more because they are following the MP act, than necessarily out of any real intention of devolution. In Chattisgarh, the gram sabha has been given the right of consultation for land acquisition.

The situation in Orissa is confusing to say the least. In terms of modifying their acts, they have given the right of consultation to the Zilla Parishad and at the same time issued a letter to the district collectors and Land Acquisition Officers, that proposals for acquiring land in the scheduled areas should be accompanied with the copies of resolutions of the concerned Gram Sabhas/ Gram Panchayats. The officers at the state level presented this letter to the researchers as proof of compliance. Interestingly, some of the field level officers have not received the letter and are following the procedure as before.

### **6.2.1 Recommendations**

The Land Acquisition Act of 1894 and the Coal Bearing Areas (Acquisition and Development) Act, 1957 should be amended to reflect the provisions of PESA:

Prior to serving individual notices to the landholders, there should be a provision in the act to compulsorily consult the Gram Sabha.

A large amount of Schedule V area is prone to be used for this act, thus there is a strong case for a Separate Land Acquisition Act for the Schedule Areas, with the provisions of PESA dully reflected.

PESA also provides for consultation in the case of Resettlement and Rehabilitation, which also needs to get reflected in the Land Acquisition Act (as also similar acts like the Coal Bearing Act).

The LA Act should also draw out guidelines for “public purpose” to make the definition more exhaustive, instead of being arbitrary. There is a definite conflict between the provision on “public purpose” and some of the provisions of the PESA act. This needs to be resolved. As stated in the Bhuria Committee report (1995) *“Both the laws (land acquisition and coal bearing areas act) and their implementation should have a positive bias in favour of tribals in the interest of equity and compensation for opportunities lost*

The LA act should be amended to incorporate a rehabilitation and resettlement policy for all projects. Case by case R&R packages provide too much scope for manipulation.

The rehabilitation should improve upon the earlier levels of living of the displaced tribes, particularly taking into consideration their communitarian ethos. Priority in any R&R package should be given to the landless and women headed households as they are worst affected due to any displacement.

The LA act should also draw out guidelines for public purpose to make the definition more exhaustive, instead of being arbitrary. There is a definite conflict between the provision on public purpose and some of the provisions of the PESA act. This needs to be resolved. As stated in the Bhuria Committee report (1995) *“Both the laws (land acquisition and coal bearing areas act) and their implementation should have a positive bias in favour of tribals in the interest of equity and compensation for opportunities lost”*.

The states of Rajasthan and Orissa should be asked to modify their PRI acts to reflect the land acquisition provision as provided in the central act.

### **6.3 PROCEDURE FOR LAND ACQUISITION IN THE BACKGROUND OF PESA**

The procedure for land acquisition has been defined in the Land Acquisition Act, 1894. It details the steps to be taken by the acquisition officer and describes the nature of notices to be issued, timeline to be followed, rules for compensation, process of redressal of grievances etc.

The act primarily addresses the need of the State to acquire private land and any land already “recorded” as government land does not come under its purview. Thus a large amount of land which the tribals have been assuming as “common” property does not come under the ambit of the act as these are recorded as either government lands or wastelands, without any individual titles to the same. As mentioned earlier in the extract from the Bhuria committee report, tribals traditionally have defined lands within their village boundaries as community lands and using the same for the betterment of the community and as the community deems fit. The state governments however have been treating these lands as their own lands and as per letter of law providing these for the exploitation by the mining industry.

The situation is made worse for the tribals due to the fact that large tracts of lands in their areas have not been surveyed and settled. Thus even though some tribals have been tilling and living off the land, they are not consulted as they do not hold individual pattas for the land. This is a problem which was evident in all the states visited and especially Orissa.

Most of the state government’s were following the procedures laid down in the land acquisition act. The three states have also made the required modifications in the procedure to the extent that an NOC from the gram sabha needs to be obtained for land acquisition.

In Rajasthan, most of the land used for mining is already under the government. Gaucher (or grazing land), which traditionally belongs to the village, has been given to the mining companies by the government without any process of consultation as the land “belongs” to the government. The villagers are not even shown alternate lands for grazing their animals.

In the case of Orissa, the Zilla Parishad has to be consulted, though in practice the gram sabha is also consulted. However, the gram sabha is defined in Orissa as the “panchayat” sabha. This obviously has made the whole consultation process a formality. A case in point is the ongoing struggle of the villagers of Turiguda in the Bathilima Panchayat (Kalahandi district), where the state wants to acquire land for a private mining company (Sterlite). Five villages in the panchayat of Bathilima (200+ households) are going to be displaced due to the acquisition. The “Gram Sabha” was organised comprising of all the villagers from the Bathilima panchayat amounting to close to 5000 tribals. They gave their “consent” for the acquisition of land for the private mining company. The traditional village structure of palli was completely ignored in the process and the palli sabha in each of the villages to be displaced is vehemently opposed to the project and have now been branded as anti development and anti social. Thus for the tribals of Turaiguda, PESA has made no difference.

### ***6.3.1 Recommendations***

- Survey and settlement operations should be taken up in those areas where it has not been done to remove errors, confusion and vagueness. Existing land holding patterns including communal systems should be fully respected and no coercion should be brought to bear in this regard.
- The Common Property Resources (CPRs) including Gaucher and Village Forests as well as water resources should not be acquired without providing alternative source of equal or higher value.
- Any land acquisition within the village boundary (irrespective of whether the land is government, village or private property) should require the consent of the gram sabha. This is important to ensure that the villagers have a say on what is happening in their surrounding environment. Most mining related activities cannot be just contained in the area acquired and the impact of the mining is also felt on the lands adjoining the acquired lands.
- A clarification needs to be issued on when the gram sabha should be consulted, i.e., when land in the village boundary is to be acquired whether it is private or public land or traditional village forest lands.

- Specific clarification to the Orissa state on what a gram sabha is and the need to consult the palli sabha and not the panchayat.
- Pending any legislation from the Central Government on the Land Acquisition Act incorporating the PESA provisions, the State Governments with scheduled areas can utilize the flexibility provided in the constitution and through the Tribes Advisory Council (TAC) and Governor of the State, modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to acquisition of land in the Schedule V Areas.

#### **6.4 PROCEDURE FOLLOWED FOR AWARDING MINING LEASE**

The PESA Act makes the recommendation of the gram sabha mandatory for awarding a lease for a minor mineral. This recommendation is required for obtaining a prospective lease, mining lease or a concession for exploitation of the mineral by auction. Thus a large amount of control on the minor mineral is devolved to the gram sabha. However, the Act does not provide any rights of consultations with regards to the major minerals. Most land acquisition in the scheduled areas takes place for exploitation of major minerals. This is a lacuna in the act, which needs to be resolved.

The state governments have limits on the extent of land to be given for lease for a minor mineral. Most such restrictions do not make it meaningful for the person interested in obtaining a mining lease to go through the land acquisition process. In Chattisgarh, for example the maximum area an individual can obtain a mining lease is 4 hectares i.e., less than 10 acres, thus they do not go through the land acquisition process and prefer to settle matters at the local level by negotiating with the individual land owner. Similar is the case for land acquisition for minor minerals in Orissa and Rajasthan. Thus while land acquisition is not required for the minor minerals, it still might be required for a major mineral.

Chattisgarh is following the Madhya Pradesh Minor Mineral Rules, 1996, which have a provision requiring the opinion of the gram panchayat before a lease is sanctioned. This act is by far the most progressive amongst the three states covered in the study. The act has also made the Panchayatiraj institutions the sanctioning authorities for a quarry permit

(limited time lease for a specified quantity). Certain quarries have also been given to the Panchayats for managing and monitoring. Even the revenue generated from the leases are shared between the different levels of the PRIs. The onus on royalty collection and check on theft was also placed on the PRIs. Having done all these, the State has realized that these initiatives have failed to increase the mineral revenue and is now planning to revert to a system wherein the collector will auction the minor minerals and deposit the revenue in the panchayat account.

Chattisgarh has also issued a GO stating that lease applications for minerals available in lands of scheduled tribes in scheduled areas should be sent to the State Government. The state government as per instructions of the Supreme Court has formed a state level committee for sanctioning such leases. All lease applications (for both major and minor minerals) have to obtain a no objection certificate from the gram sabha. The onus of obtaining the NOC is on the applicant. Apparently, the lease will not be awarded if the gram sabha does not give the NOC. However, it was not clear how the officials ensure that the gram sabha was actually held. While the state has a policy to support the tribal cooperatives in obtaining minor mineral leases, the actual implementation is far short of expectations (Case study of Markatola).

With regards to the procedure followed in light of PESA, the state government of Chattisgarh has made the relevant modifications requiring the applicant to obtain the NOC of the gram sabha prior to applying for the lease. There is also a provision that the applicant has to obtain an NOC from the forest department, tehsildar, mining or the Sarpanch when the land on which the lease is applied for comes under their purview. This NOC should be given within thirty days. There is no time limit for the NOC from the gram sabha. Field experience suggested that the applicant, for the purpose of obtaining the NOC, presents a very rosy picture of the mining activities and even make various promises to the villagers. In some cases, the gram sabha meeting for issue of NOC is accompanied by a feast (sponsored by the applicant) for the villagers. Once the NOC is issued, the applicant is not bound by anything (except his/her conscious) to implement the promises. There is a

need for putting in place procedures whereby the applicant continues to remain responsible to the villagers even after being issued the lease.

Rajasthan has not modified their mineral concession rules to reflect the PESA provisions related to minor minerals. However, the state has issued a GO stopping all renewals, fresh leases to non tribals in scheduled areas. The Panchayatiraj department has also issued rules describing the procedure to be followed for obtaining the recommendation of the PRIs. This is a positive step. The rule clearly demarcates the jurisdictions of the different tiers of PRIs. However, the elected bodies are given the recommendatory powers and not the gram sabha itself. The onus of obtaining the NOC is on the mining department and also makes it mandatory for them to send (to the gram sabha) along with the proposal a plan of area superimposed on the revenue map and description report mentioning details of the area. Thus the PRI is expected to make an informed decision and also will get a physical idea of the actual mining operations. Interestingly, the collector or the revenue department has very little role in the mining lease process in Rajasthan, with almost all the powers being vested in the officials of the mining department. The role of the collector is limited to that of consultation.

The field situation was similar in Rajasthan as in Chattisgarh, with the process of obtaining NOC being “supported” by the lease applicant. Field experience suggested that wherever the gram sabha was united and strong they were able to negotiate a better deal for themselves. In some of the villages the villagers were awaiting the expiry of the existing mining leases, so that they can lay claim for mining through the formation of a tribal cooperative. There is no revenue sharing with the village and the villagers in some places have been pleading with the government to give their panchayats 1% of the royalty from the mining lease for village development activities.

In Orissa, as already mentioned, the “appropriate level” has been defined as the zilla parishad for consulting prior to obtaining a mining lease. This procedure is being followed. The officers in Orissa defend their decision to make the Zilla Parishad as the consulting body in the PRI structure saying that the central government had not clearly defined and

given them the authority to define the “appropriate level”. While in a literal sense this is true, the officers did not seem to appreciate the spirit behind the act, while making this assumption. Orissa has seen large scale mining development activities and consequently, the tribal communities have also experienced the downside of mining. This has resulted in some strong response against mining development in parts of the state (especially the southern Orissa – bauxite belt), which the officers unfortunately perceive as a nuisance. This could be one of the factors why the officers are apprehensive to devolve too much of the powers. There are of course large political interests also involved. Ironically, while for land acquisition the permission of the gram sabha is necessary, when it comes to the lease of a minor mineral, the gram sabha is not even informed.

The procedure for obtaining the mining lease for minor mineral is followed as per the Orissa Minor Mineral Concession rules, 1990. These rules define a controlling and competent authority depending on the land on which the mineral is available (village land, forest etc) and also the extent of area applied for lease. The rules have not been modified to reflect the changes due to PESA. However, the Orissa Zilla Parishad Act, 1991 was modified to incorporate the provisions related to consultation. The Panchayatiraj department of the state government is also pursuing with the steel and mines department to get the necessary changes incorporated in the mineral concession rules. There is no revenue sharing with the PRIs and all the revenue from the minerals accrues to the state government or the central government depending on the mineral.

#### ***6.4.1 Recommendations***

- In the PESA act consent of the gram sabha should be made mandatory for major minerals also.
- The Mines and Minerals (Development and Regulation) Act should be suitably modified to reflect the above provision
- In Orissa and Rajasthan the minor mineral concession rules should be modified to reflect the provision requiring consent of the gram sabha for lease. The good aspects of both the MP and the Rajasthan PR act should be incorporated in the modifications. Specifically the provision should lay the onus on the mining department for obtaining

the NOC and this should be done after the gram sabha has been provided with the map of the areas to be mined and the extent and the relevant information. The gram sabha needs to make an informed decision.

- Orissa and Rajasthan should incorporate provisions providing for a share of the royalty to go to the gram sabha, like in the case of Chattisgarh.
- Most often it was found that the gram sabha having given the NOC (based on promises of the owner) realizes only too late that their lands, air and water are being polluted. There is a need to develop a mechanism whereby the mine owner is responsible to the villagers even after the NOC is given. This could be in the form of an agreement between the gram sabha and the mine owner laying down the ground rules for mining and binds the mine owner, at least to some extent. Alternatively, the NOC could be a conditional one, with clearly stated terms of using the land and penalties (which should accrue to the Government and Gram Sabha in equal proportion) to be levied in case of breach of contract by the lessee.
- All the state governments have made lofty pronouncements that they would encourage the marginalized sections of the society to take up small scale mining. This needs to be converted into reality. There should be a special emphasis in terms of action and for this purpose the mining department should work with the tribal welfare or PR department to work out the modalities of implementation. Like the MNCs, the tribal societies who come forward should also be provided with facility for single window clearance.

## **6.5 VIOLATION OF LAND ACQUISITION LAWS**

As already mentioned in the introductory chapter, the officials not providing access to the actual land acquisition proceedings inhibited the ability of the team to get a proper assessment of the violations, if any, in the land acquisition process. The PESA act requires that the gram sabha be consulted prior to acquisition of land. However, this has no teeth. Even when the villagers voice their opposition in the consultation process, the final authority is the district collector who can overrule the opposition. This again emanates from the concept of eminent domain. A fundamental change is required at that level. Else

whatever, processes might be introduced for more involvement of the tribals will become mere rituals.

In Orissa as already mentioned the revenue department has issued a Letter in July, 2001 for all proposals to be accompanied by a copy of the resolution of the concerned gram sabha/ gram panchayat. Procedurally, this is followed, though there is no binding on the government to abide by the resolution of the gram sabha. Also the gram sabha is equivalent to the “panchayat” sabha. Practically, in the field the consultation happens only with the Sarpanch and the ward members who are provided various “incentives” to pass the resolution.

In Chattisgarh too the procedural modification requiring a consultation with the gram sabha has been made. In Chattisgarh it appeared that the Gram Sabhas visited, were slightly more empowered (than Orissa) though this does not change the situation for them as the final authority remains the district collector and he/she can overrule their objections to land acquisition. In the case of Rajasthan no changes have been made in any of the rules of the state, though the Gram Sabha has to issue a NOC for land acquisition to take place. Rajasthan has the maximum number of mining leases for minor minerals. Almost in all cases the land on which the lease is given already belongs to the government (common lands of the village – for example Gaucher) and the question of acquisition does not arise.

Given that most states have incorporated the provision of consultation in the land acquisition process field experience suggested that this has not necessarily improved the situation at the village level. Some degree of positive change is however seen wherever the villagers were aware of the provisions and united against the acquisition. However, nowhere was it noticed that the state officials were approaching the issue in the spirit of the act. Somehow there is a very adversarial relationship between the officials and the villagers, with the state considering the demands and protests of the villagers to be a nuisance and in some cases even anti social. This attitudinal problem has to be addressed for any meaningful change in the rights of the villagers.

With regards to the various procedures of the Land Acquisition Act itself, it was found that the villagers in some cases did not receive the notifications for land acquisition. Even when they did they were not a position to read the same as most are illiterate. This was the reason that they would give their objections only orally and never in writing. Even when objections are given in writing in the form of petitions, they did not have a proper acknowledgement, which would allow them to pursue their cases further.

There is a lack of transparency in relation to land acquisition, with most villagers unaware of the extent of the acquisition being proposed and the details of the projects. In some cases where the villagers are aware of the extent of the land being acquired they are not sure which lands will be acquired. For example in the Kalahandi case the villagers have received the notice where the extent of land in different villages is mentioned, but there are no details of which lands in their village. This lack of information invariably leads to misinformation and this can only hurt the smooth functioning of land acquisition process.

The worst situation is when the acquisition starts without completion of rehabilitation, as evident from the statistic that 69% of the tribals displaced are yet to be rehabilitated. This has created a lot of apprehension amongst the villagers where land is to be acquired now. They feel they will also be left in the lurch after they give their consent and the acquisition is over. Unfortunately, a situation has arisen where the government has to first prove its intentions. This can happen only when first they solve the problem of those who are yet to be rehabilitated in the various projects in the last 50 years. While this might sound radical, it would be inhuman to do otherwise. For all new projects Resettlement and Rehabilitation should be completed prior to commencing the project.

Another change that needs to be brought about is in considering the tribals as shareholders rather than stakeholders<sup>18</sup>. If the tribals are provided a share in the project their attitude might be different and they will have something to live of once their traditional livelihoods

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<sup>18</sup> The Bhuria Committee on self rule in urban areas of the Schedule V Areas suggests a 50% share to the tribals as virtue of being owners of the resources being used. Similarly Justice K. Ramaswamy has said that 20% of the net profits should be set apart as a permanent fund as a part of the industrial/business activity for development of the region (Samata Vs. State of AP & Others – AIR 1997 SC 3297)

are destroyed, due to the project. Cash compensation is absurd when one considers the economic system and level at which most tribals are presently operating. They are incapable of handling large amounts of cash all at once. In case cash compensation is unavoidable, it can be in the form of stocks (given to them at par as in the case of promoters) in the company being setup. Or some kind of insurance cum pension scheme should be devised to ensure that they get a regular stream of income instead of a lump sum which they invariably end up consuming.

When land is acquired in an area for a large project, the land rates in the surrounding area goes up and what is given as cash compensation for say 2 acres will not be enough to even purchase 1 acre of land. In any case a farmer, whose land has just been bought for say Rs. 40000, will most definitely refuse to buy similar land at Rs. 80000. Thus the onus is on the “acquirer” to ensure that the farmer gets some alternate land for the land they are losing.

#### ***6.5.1 Recommendations***

- There is a need to question the power of eminent domain of the state. While it cannot be argued that it should be done away with, a clearer definition and guidelines for public purpose would help remove some of the arbitrariness present in the existing system.
- The lack of transparency in the process of land acquisition needs to be addressed. Even when the villagers are receiving the notices as required by law, they are not getting a clear picture of the project and exact details of the land being acquired. This process of land acquisition needs to be more sensitive to the communication needs of the tribals and ideally, the revenue department officials should visit the villages and explain the details of the project, areas to be acquired, process of land acquisition. The mere fact that the process is stated in the act does not imply that the tribals are aware of the process or for that even understand it. Most of the information they obtain at this stage is hearsay and can either raise their expectations or make them completely antagonistic. Too often the government departments are taking a position, which is already biased against the tribals and towards the company. A sensitization programme for the

officials of the different departments (especially mining and revenue) to the needs of the tribals might be a useful step in this direction.

- Resettlement and rehabilitation should be completed prior to commencement of the project. The agreement that is entered into with the company by the government should emphasize this point to ensure that the company does not push for initiating their project even before the R&R is complete. The onus is on the government to undertake the R&R as they are already being paid by the company for this purpose. This arrangement needs to be studied to ensure that the inefficiency of the government does not hurt the tribals and indirectly the company also. One possibility would be to appoint a committee to oversee the R&R. This committee could consist of displaced villagers, government officials, prominent local people, and company officials. This would also ensure that there is more transparency.
- Land to land compensation should be mandatory for the tribals who are being displaced in the scheduled areas. In all such cases it should be ensured that the Women's name is also entered in the entitlement documents. In case land is not available (or even when it is given), some other arrangement whereby the tribals continue to retain their control on the resource should be explored. One possibility would be to give the lease in the name of the tribal society, where the tribals have joint ownership of the resource. This would in line with the Schedule V as stated in the constitution whereby no tribal land can be leased or sold to non tribals. Various formulae, 20% of net profit, 50% of the shares, have been suggested in the past and these need to be explored by holding discussions with the tribal communities and a realistic and operationally transparent system needs to be evolved.

## **6.6 PANCHAYATI RAJ INSTITUTIONS RESPONSE TO VIOLATIONS**

The PRIs response to violations in the land acquisition process is a function of their unity, awareness levels and in some cases external support in the form of information and solidarity. The different states visited threw up different responses based on the local situation and historical experience.

The mining policy and mining related proclamations of the different state government are sometimes in conflict with the PESA and protection of the rights of the tribals and also the environment. The mining departments in all the states consider the Forest Conservation Act as a hindrance to mineral development and want it modified if not removed. Similar is their attitude to the people who reside near and off of the forest.

The tribals in Rajasthan are the worst off in some regards. Drought and crop failure is forcing the tribals to consider mining as the only economically feasible option for livelihoods. Of course water scarcity can be attributed to the fact that there is excessive exploitation of minerals. But there is not much the tribals in their present condition can do about this. It was found that the villages where the villagers were aware and united they were able to negotiate with the mining companies to obtain some welfare support for their village. Where the tribals were not aware and united, they were not even able to obtain proper wage rates, let alone any community development activities.

The mines are operating through remote control (owner lives somewhere else with only an accountant on site) and they are not following any safety standards nor provide any benefits to the tribal who are working in their mines. In some of the villages the workers are getting together and forming unions so that they can fight for their rights as workers. The situation is not helped by the fact most of the workers are from other areas and this creates a problem in terms of uniting the workers. In one of the villages (Case study of Rohanwada) the gram sabha has managed to obtain Rs. 51000 for a school by pressuring the local mining company and the government. The villagers are also fighting with the company to provide provident fund and health benefits. These are however stray cases of gram sabha activism and unfortunately will not improve the general situation as long as the mining companies and government officials keep turning a blind eye to the condition of the villagers as workers.

Chattisgarh has the most gram sabha friendly legislations and rules and a policy proclaiming that they will encourage the tribal cooperatives to take over small mines. The reality however, is no different from the other states. The tribals of Markatola have come together and formed their own Adivasi cooperative and applied for a mining lease from the government department. They have deposited the requisite fees and also taken the NOC

from the gram sabha. However, they are being made to run from pillar to post for obtaining the lease. If it is not the revenue department then it is the forest department, which hassles them and keeps raising queries on their lease. The officials at the field level are highly corrupt as per the villagers and as the Adivasi cooperative is not ready to pay bribes they are moving their files.

In another case (Case study of Tekka Dodda) where the mining operations are going on and the tribals are employed as daily wage labour they are not even being paid minimum wages!!! The response of the people was to organise a dharna in front of the Sub Divisional Magistrates office. Despite sitting there for a week or so they were able to obtain only an increase of Rs. 2 in their wages. The attitude of the SDM was indifferent to say the least and he promptly branded the protesting tribals as troublemakers. The villagers obviously felt that Panchayatiraj and PESA do not make any sense to them if they have to fight for minimum wages.

Land acquisition has become a very contentious issue in Orissa thanks partly to the poor record of rehabilitation of the public sector projects started in Orissa in the 60s and 70s as also the large number of water projects. This opposition is strongest in the southern districts of Orissa, where a large number of multinational companies and private sector mining companies are interested in initiating their mining activities. The tribals in these areas have seen firsthand what displacement can do to their cultural identities and traditional livelihoods.

The ongoing case of land acquisition in Lanjigarh and Kalahandi block just highlights the typical response of the tribals of this region and how the anomalies in the Orissa version of the PESA act can violate the rights of the tribals. The district authorities did organise a gram sabha for “consulting” about the land acquisition to take place. The village of Turiguda is a village with 38 families and is one of the villages, which is going to be displaced. The villagers are against the project and have decided so collectively in the palli sabha. The gram sabha itself which as per the Orissa government consists of all the villagers in the panchayat was also organised and they “unanimously” decided that the land acquisition should take place. This was meeting attended by close to 1000+ people along with the company officials, government revenue department, police officials and

apparently a large number of outsiders. None of the villagers belonging to the Turiguda village “signed” on the resolution. Thus the due process as per the law was followed. However the villagers are still against the acquisition and are demanding that the process should be started from the palli sabha and not from the gram sabha, which is dominated by those who are not going to be affected by the project. The villagers were not allowed to attend the public hearing also which was held in April, 2003 and are facing oppression from the police and company officials who have hired local goons to harass them from time to time. The villagers feel that the negotiations if any should take place in the village in front of the palli sabha.

As can be seen the response of the tribals to the violations is varied depending on their historical experiences and local situation. In all the cases awareness of the rules is high and those are getting aware are also slowly beginning to organise themselves so that the extent of exploitation can be reduced. None of the PRIs are strong enough to utilize the legal system to fight for their rights. Most of them are doing so based on mobilization of people and are localized in nature. In almost all the cases there is an involvement of an NGO which is providing the solidarity and information.

#### **6.7 PUBLIC PURPOSE VS PROTECTION OF LAND RIGHTS OF TRIBALS**

Acquisition of land for Public Purpose is done under the Land Acquisition Act of 1894. The term itself remains “undefined” though the act does mention some instances that can be considered as “Public Purpose”. A large amount of discretion lies with the district level authorities in this matter. The state governments go by the recommendation of the district collector in this regard as he/she is considered to be in the best position to decide. The judiciary also has been of the view that the state should decide public purpose, in the various judgments delivered in this context. Linked closely to the argument of Public Purpose is the concept of eminent domain, which gives the government right on land, not owned by an individual. Thus all the common property in the village belongs to the government by default and the villagers do not have any rights on them. This is an anti thesis to the concept of life as per tribal systems, where the common property is considered to belong to the community and it is to be shared in a manner, which benefits the community and is also maintained for posterity.

Given the logic of public purpose and eminent domain it is but unavoidable that there is tribal land alienation. The basic change, which can be brought about, is in the process of utilizing these instruments. There is a need to work out a proper definition for public purpose, or at the very least some broad guidelines, which can be followed by the district level authorities for arriving at the definition of public purpose. This system should be consultative in nature. This will remove some of the discretionary nature of the present system and also ensure a more participatory approach.

It is surprising that while public purpose and land acquisition is done of tribal lands, the same is not followed when they are being rehabilitated. The problem is not that land is being acquired from the tribals, but that the fact that they are being alienated from it. Land to land compensation is the only way it can be ensured that this does not occur. Systems can be worked out to ensure that when land acquisition is being acquired for a private industry, some land can also be earmarked for the compensating the displaced.

As mentioned whenever land is acquired for public purpose from the tribals, they can be treated as shareholder in the project instead of stakeholders. As the acquisition process is taking something that belongs to them either as a community or as individuals, treating them, as shareholders would be the right way of sharing the fruits of what is being taken away from them.

One of the major problems with land acquisition in India has been the utter neglect of proper rehabilitation and resettlement, which obviously leaves behind very high levels of discontent. This has attained such a large number today that it can no longer be ignored. There is need to ensure that all projects should start only after proper rehabilitation and resettlement has been completed, because once the project starts the negotiating power of the communities goes down and they are left marginalized. The Resettlement and Rehabilitation process needs to be handled with a lot more sensitivity to the tribal way of life instead of expecting them to change to the so called mainstream way of life (just as some of us might not like to change our lifestyles for theirs).

## **CHAPTER 7 – SUMMARY OF RECOMMENDATIONS**

*The recommendations are segregated here as per Union Government, State Level and General. The justifications of the recommendations can be found in the preceding chapter.*

### ***Union Government***

- The Land Acquisition Act of 1894 and the Coal Bearing Areas (Acquisition and Development) Act 1957 should be amended to reflect the provisions of PESA. Specifically prior to serving individual notices to the land holders, there should be a provision in the act to compulsorily consult the Gram Sabha. Given that a large amount of Schedule V area is prone to be used for this act, there is a strong case for a Separate Land Acquisition Act for the Schedule Areas, with the provisions of PESA dully reflected. PESA also provides for consultation in the case of Resettlement and Rehabilitation, which also needs to get reflected in the Land Acquisition Act (as also similar acts like the Coal Bearing Act).
- The LA act should also draw out guidelines for public purpose to make the definition more exhaustive, instead of being arbitrary. There is a definite conflict between the provision on public purpose and some of the provisions of the PESA act. This needs to be resolved. As stated in the Bhuria Committee report (1995) *“Both the laws (land acquisition and coal bearing areas act) and their implementation should have a positive bias in favour of tribals in the interest of equity and compensation for opportunities lost”*
- The LA act should also be amended to incorporate a rehabilitation and resettlement policy for all projects. Case by case R&R packages provide too much scope for manipulation. Additionally as suggested elsewhere, the rehabilitation should improve upon the earlier levels of living of the displaced tribes, particularly taking into consideration their communitarian ethos. Priority in any R&R package should be given to the landless and women headed households as they are worst affected due to any displacement.

- A clarification needs to be issued on when the gram sabha should be consulted, i.e., when land in the village boundary is to be acquired whether it is private or public land or traditional village forest lands.
- In the PESA act consent of the gram sabha should be made mandatory for major minerals also.
- The Mines and Minerals (Development and Regulation) Act, 1957 should be suitably modified to reflect the above provision

### *State Level*

- Pending any legislation from the Central Government on the Land Acquisition Act incorporating the PESA provisions, the State Governments with scheduled areas can utilize the flexibility provided in the constitution and through the Tribes Advisory Council (TAC) and Governor of the State, modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to acquisition of land in the Schedule V Areas.
- The states of Rajasthan and Orissa should be asked to modify their PRI acts to reflect the land acquisition provision as provided in the central act.
- Survey and settlement operations should be taken up in those areas where it has not been done to remove errors, confusion and vagueness. Existing land holding patterns including communal systems should be fully respected and no coercion should be brought to bear in this regard.
- Specific clarification to the Orissa state on what a gram sabha is and the need to consult the palli sabha and not the panchayat.
- In Orissa and Rajasthan the minor mineral concession rules should be modified to reflect the provision requiring consent of the gram sabha for lease. The good aspects of both the MP and the Rajasthan PR act should be incorporated in the modifications. Specifically the provision should lay the onus on the mining department for obtaining the NOC and this should be done after the gram sabha has been provided with the map of the areas to be mined and the extent and the relevant information. The gram sabha needs to make an informed decision.

- Orissa and Rajasthan should incorporate provisions providing for a share of the royalty to go to the gram sabha, like in the case of Chattisgarh.
- All the state governments have made lofty pronouncements that they would encourage the marginalized sections of the society to take up small scale mining. This needs to be converted into reality. There should be a special emphasis in terms of action and for this purpose the mining department should work with the tribal welfare or PR department to work out the modalities of implementation. Like the MNCs, the tribal societies who come forward should also be provided with facility for single window clearance.

### *General*

- Most often it was found that the gram sabha having given the NOC (based on promises of the owner) realizes only too late that their lands, air and water are being polluted. There is a need to develop a mechanism whereby the mine owner is responsible to the villagers even after the NOC is given. This could be in the form of an agreement between the gram sabha and the mine owner laying down the ground rules for mining and binds the mine owner, at least to some extent. Alternatively, the NOC could be a conditional one, with clearly stated terms of using the land and penalties (which should accrue to the Government and Gram Sabha in equal proportion) to be levied in case of breach of contract by the lessee.
- There is a need to question the power of eminent domain of the state. While it cannot be argued that it should be done away with, a clearer definition and guidelines for public purpose would help remove some of the arbitrariness present in the existing system.
- The lack of transparency in the process of land acquisition needs to be addressed. Even when the villagers are receiving the notices as required by law, they are not getting a clear picture of the project and exact details of the land being acquired. This process of land acquisition needs to be more sensitive to the communication needs of the tribals and ideally, the revenue department officials should visit the villages and explain the details of the project, areas to be acquired, process of land acquisition. The mere fact

that the process is stated in the act does not imply that the tribals are aware of the process or for that matter even understand it. Most of the information they obtain at this stage is hearsay and can either raise their expectations or make them completely antagonistic. Too often the government departments are taking a position, which is already biased against the tribals and towards the company. A sensitization programme for the officials of the different departments (especially mining and revenue) to the needs of the tribals might be a useful step in this direction.

- Resettlement and rehabilitation should be completed prior to commencement of the project. The agreement that is entered into with the company by the government should emphasize this point to ensure that the company does not push for initiating their project even before the R&R is complete. The onus is on the government to undertake the R&R as they are already being paid by the company for this purpose. This arrangement needs to be studied to ensure that the inefficiency of the government does not hurt the tribals and indirectly the company also. One possibility would be to appoint a committee to oversee the R&R. This committee could consist of to be displaced villagers, government officials, prominent local people, and company officials. This would also ensure that there is more transparency.
- Land to land compensation should be mandatory for the tribals who are being displaced in the scheduled areas. In all such cases it should be ensured that the Women's name is also entered in the entitlement documents. In case land is not available (or even when it is given), some other arrangement whereby the tribals continue to retain their control on the resource should be explored. One possibility would be to give the lease in the name of the tribal society, where the tribals have joint ownership of the resource. This would be in line with the Schedule V as stated in the constitution whereby no tribal land can be leased or sold to non tribals. Various formulae, 20% of net profit, 50% of the shares, have been suggested in the past and these need to be explored by holding discussions with the tribal communities and a realistic and operationally transparent system needs to be evolved.

- Some of the State governments are utilizing the rural development programmes for compensating the tribals who are getting displaced and also want to use the funds meant for rural infrastructure to establish infrastructure for the mining companies. Such cross subsidy should be stopped. Compensation should be paid from the amount that the “acquiring party” is paying as part of its acquisition costs. It is an irony that mining projects have to be made feasible by utilizing the welfare funds meant for tribals.
- The Common Property Resources (CPRs) including Gaucher and Village Forests as well as water resources should not be acquired without providing alternative source of equal or higher value.
- Any land acquisition within the village boundary (irrespective of whether the land is government, village or private property) should require the consent of the gram sabha. This is important to ensure that the villagers have a say on what is happening in their surrounding environment. Most mining related activities cannot be just contained in the area acquired and the impact of the mining is also felt on the lands adjoining the acquired lands.

## Recommendations in Table format of Legislation and Required Amendments

### *Union Government*

<b>Legislation</b>	<b>Required Amendment</b>
Land Acquisition Act 1894 and Coal Bearing Acts (Acquisition and Development) Act, 1957	Inclusion of provision that requires the Government and relevant departments to compulsorily consult the Gram Sabha, prior to serving individual notices to land holders.
Land Acquisition Act 1984	Creation of a separate Land Acquisition Act for the Scheduled Areas, fully reflecting the provisions of PESA.
Land Acquisition Act 1984	The provision of a definition of “public purpose” to reflect the Bhuria Committee’s (1995) findings that “the laws should have a positive bias in favour of tribals in the interest of equity and compensation for opportunities lost”.
Land Acquisition Act 1894 and Coal Bearing Acts (Acquisition and Development) Act, 1957	Inclusion of a compulsory consultation process in cases of Resettlement and Rehabilitation.
Land Acquisition Act 1984	All projects falling within the Act should compulsorily incorporate a rehabilitation and resettlement policy.
Land Acquisition Act 1984	R & R packages should improve on the earlier living conditions of the displaced tribals.
Land Acquisition Act 1984	Priority in R & R packages should be given to landless and female-headed households.
Land Acquisition Act 1894 and Coal Bearing Acts (Acquisition and Development) Act, 1957	Mandatory consultation of the gram sabha when any land in the village boundary is to be acquired, whether public or private land, or traditional village forest lands.
PESA Act and Mines and Minerals (Development and Regulation) Act 1957	The consent of the gram sabha should be mandatory for major as well as minor minerals.

### *State Government of Orissa*

<b>Legislation / Procedure</b>	<b>Required Amendment</b>
PRI Act	Modify the Act so as to reflect the land acquisition provision as provided in the central act.
PRI Act	Incorporation of provisions providing for a share of the royalties to go to the gram sabha.
Consultation of the Gram Sabha	Clarification that the gram sabha comprises the palli sabha and not the Panchayat.
Minor Mineral Concession Rules	Modify the rules to reflect the provision requiring the consent of the gram sabha for leases.
Minor Mineral Concession Rules	Incorporate the positive aspects of the MP and Rajasthan Act, specifically the provision should lay the onus on the mining department to obtain the NOC and this should be done after the gram sabha has been provided with the map of the areas to be mined and the extent of the relevant information.

*State Government of Rajasthan*

<b>Legislation / Procedure</b>	<b>Required Amendment</b>
PRI Act	Modify the Act so as to reflect the land acquisition provision as provided in the central act.
PRI Act	Incorporation of provisions providing for a share of the royalties to go to the gram sabha.
Minor Mineral Concession Rules	Modify the rules to reflect the provision requiring the consent of the gram sabha for leases.
Minor Mineral Concession Rules	Modify the rules to reflect the provision requiring the consent of the gram sabha for leases.

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