Seeking 'Swaraj' in Independent India: Protecting Environment through protection of rights of the Indigenous

Nawneet Vibhaw
Assistant Professor of Law
National Law University Delhi
India
Constitutional Provisions

• Article 40: State shall take steps to organise village Panchayats and endow them with such powers and authority to enable them to function as units of local self-government.
• 73rd Constitutional Amendment 1992: Panchayati Raj Institutions (PRIs) given constitutional status as tier of governance below the State
• Part IX (Art. 243-243O)
Bhuria Committee

• Constituted to make recommendations with respect to law for extending provisions of the Constitutional Amendment to the Scheduled Areas.

• Recommended granting tribal control over productive land and forests and minimizing administrative interference in tribal affairs.
Panchayats Extension to Scheduled Areas (PESA) Act, 1996

• Recognizes Gram Sabha as the primary centre for tribal governance
• Andhra Pradesh, Chattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Orissa, Rajasthan
• Enable tribal society to shape their development and to preserve and conserve their traditional rights over natural resources
• Envisions people’s role in planning and implementation (Grass-root democracy)
PESA, 1996

- Gram Sabha or Panchayat’s role:
  - Land-acquisition for development
  - Rehabilitation
  - Actual planning and implementation of projects

- In mining activities prior recommendation is sought from Gram Sabha or Panchayat.
- Gram Sabha is vested with the ownership of the minor forest produce and is empowered to prevent the alienation of land.
Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006

- Recognises and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers
- Provides for the **right to hold and live** in the forestland under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers
- Recognises the right of **ownership, access to collect, use, and dispose of minor forest produce** which has been traditionally collected within or outside village boundaries.
• Provides recognition of forest rights of other traditional forest dwellers who have primarily resided in and have depended on the forest or forest land for *bona fide livelihood needs*, for at least three generations prior to 13.12.2005.

• Rights conferred under the Act shall be heritable but not alienable or transferable.
• Gram Sabha has been designated as the competent authority for initiating the process of determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers
• Ceiling of occupation of forest land for purposes of recognition of forest rights (not to exceed four hectares)
The Mines and Minerals (Development and Regulation) (MMDR) Bill of 2011

- Requires coal companies to provide 26 per cent of post-tax profit every year to a district-level body, District Mineral Foundation (DMF).
- DMF to distribute funds to project-affected people.
- Miners of major minerals, like limestone and iron ore, will have to give DMF an amount equal to the royalty they pay to states.
- The profit-sharing percentage for minor minerals, like sand and marble, to be decided by the states after consultation with National Mining Regulatory Authority (NMRA), which is proposed under the Bill.
• The Bill’s profit-sharing provision will make available Rs 10,500 crore a year for the affected communities at the current level of mining. 
(Source: Centre for Science and Environment, New Delhi)
Section 41(3) of the Bill

- The Central Government may, after taking into consideration the report and recommendations of the National Mining Regulatory Authority, by notification, amend the Second Schedule to enhance or reduce the rate specified therein with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any major mineral more than once during any period of three years.
Land acquisition

• Being done by companies in the name of tribals
• Tribals providing Power of Attorney to companies to construct on their lands by providing thumb impression
• A corporate house purchased 47.3 hectares of land in the name of 8 Gond tribals
• Industrialists purchased lands in the names of their drivers, guards and unknown tribals.
### Acquisition shortcut

*Avantha Group acquired 43.7 ha of tribal land in the name of eight tribals*

<table>
<thead>
<tr>
<th>Name</th>
<th>BPL card no</th>
<th>Land bought (ha)</th>
<th>Payment made (₹)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ram Singh</td>
<td>1,487</td>
<td>6.281</td>
<td>1,47,53,880</td>
</tr>
<tr>
<td>Badkuram</td>
<td>1,539</td>
<td>3.887</td>
<td>91,30,446</td>
</tr>
<tr>
<td>Bhanwar Singh</td>
<td>1,645</td>
<td>7.309</td>
<td>1,71,68,621</td>
</tr>
<tr>
<td>Vyas Narayan</td>
<td>1,600</td>
<td>6.564</td>
<td>1,54,18,638</td>
</tr>
<tr>
<td>Budharu Ram</td>
<td>1,558</td>
<td>5.422</td>
<td>1,27,36,115</td>
</tr>
<tr>
<td>Derha Ram</td>
<td>1,534</td>
<td>4.989</td>
<td>1,17,19,011</td>
</tr>
<tr>
<td>Salik Ram</td>
<td>1,628</td>
<td>3.184</td>
<td>74,79,120</td>
</tr>
<tr>
<td>Igul Singh</td>
<td>BPL card was cancelled after a member of his family got government job</td>
<td>6.071</td>
<td>1,42,60,596</td>
</tr>
</tbody>
</table>

*Source: Office of the Sub-Registrar, Raigarh, Chhattisgarh*
Questions to think about

• Consultation v. Consent

• Does it make sense to ‘empower’ illiterate people who have no access to information?

• Who would the indigenous people rely upon?
• Is profit-sharing a social license to mine?

• Why is the Government trying to protect the profits of the foreign companies?

• Why are states most rich in mineral wealth also the most affected by Naxalism?
THANK YOU!