

Is there any reprieve for the Tribals?
Kalinga Killings call for an immediate moratorium on Green Field Projects

Will the Kalinga Killings Change the hearts of our Emperors

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The Kalinga War, we all know changed the heart of Emperor Ashoka. Our current day emperors, could take a lesson or two from history. If they do not realise that this, they will be forced to abide by the law and spirit of our constitution. In a series of articles we would like to emphasise on the mm&P Charter of demands, the first of which is a complete moratorium on green field projects.

Remembering our constitutional obligations

The constitutional review committee set up by the previous government pointed out to the fact that our governance system has failed to redeem even the preamble of the constitution. In the context of mining and industrialisation the Samatha judgement is a reflection of the extent of derailment of the constitutional obligations of the government and the need to build an egalitarian social order as envisaged for a free India. The judgement focused upon fundamental nature of the country as a Socialist Secular Democratic Republic of India, Bharat and the state as a Welfare State. It stated, *"Welfare State is a Rubicon between unbridled individualism and communism. All human rights are derived from the dignity of a person and his inherent worth. Fundamental rights and Directive Principles have fused in them as fundamental human rights as indivisible and interdependent. The Constitution has charged the State to provide facilities and opportunities among the people and groups of people to remove social and economic inequality and to improve equality of status. Article 39(b) enjoins the State to direct its policy towards securing distribution of the ownership and control of material resources of the community as best to subserve the common good. The founding fathers with hindsight, engrafted with prognosis, not only the inalienable human rights as a part of the Constitution but also charged the State as its policy to remove obstacles, disabilities and inequalities for human development and positive actions to provide opportunities and facilities to develop human dignity and equality of status and opportunity for social and economic democracy. Economic and social equality is a facet of liberty without which meaningful life would be hollow and a mirage."*

Samatha Judgement was an historic judgement passed by a majority bench of the Supreme Court in 1997. The judgement starkly reminded the Governance systems of their fundamental purpose according to the constitution and categorically stated that the State has no right to alienate lands of the Tribals, particularly in Andhra Pradesh and generally in all the Schedule V States of the country.

The prime affected financial vested interests were the mining conglomerates as the prime mineral resources and tribal areas are almost co-terminus. The Samatha judgement which ruled that the State had no right to grant leases to private companies in the Scheduled area also called for setting aside twenty percent of the profits of mining companies for local development beyond what is statutorily required to be done under the existing laws.

Undermining the constitution in the guise of economic policy

In contrast The BALCO judgement must be considered a document of the times and as the then Union Minister for Law, Justice and Company Affairs, Shri Arun Jaitley said the recent judgement of the Supreme Court of India in the disinvestment of BALCO has been a turning point, a defining moment and a milestone towards ongoing economic reforms and privatization of public sector undertakings. Inaugurating a seminar on the Role of Judiciary in Economic Reforms under the aegis of the Associated Chambers of Commerce and Industry of India (ASSOCHAM) here this evening, the Law Minister said that the Government stood firm in its commitment to economic reforms and that would go on unhindered provided the Government did not blink. Talking of changes in the outlook of judiciary towards economic reforms, the former Law Minister said the Courts after the BALCO judgement should not

interfere in economic policy domain which was the preserve of the executive. He said that the BALCO Judgement and the Judgement in Contract Labour law have come a long way in giving further fillip to the economic reforms.

The BALCO judgement states *"While we have a strong reservations with regard to the correctness of the majority decision in Samatha's case, which has not only interpreted the provisions of the aforesaid Section 3(1) of the A.P.Scheduled Areas Land Transfer Regulation 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh."* The judgement further states that *"the provisions of the Madhya Pradesh Land Transfer Code, 1959 and section 165 in particular are not in pari material with the aforesaid section of the Andhra Pradesh Regulation"*. The land transfer regulations in the country were brought in to provide for legislative measures to protect the rights enshrined in the constitution. Whether in A.P or in any other of the Fifth Schedule state, the intent of the law was similar – that tribal lands are inalienable.

It is unfortunate that the disinvestment decision completely overlooked the very basic spirit of the Samatha Judgement. Even if disinvestment was a necessary economic decision, the government either should have kept aside the 20 percent equity to the local tribal communities which could have been devolved to the respective gramshabhas or a SPV created with complete tribal holding through a book-building approach. The lack of a focus on the constitutional basis and a continuing practice of convenient means for the political, bureaucratic and judicial systems as policies are slowly making the constitution and its defending parliament irrelevant.

MMRD Amendment: Debate and Practice

The Parliamentary debates in the context of amendments to the Mines and Minerals Regulation and Development Act clearly shows the great divide in the country and highlights the concerns. Shri Basudeb Acharia opposed the Bill right at the stage of introduction saying that this is an open house for multinational corporations and foreign companies to loot and plunder our mineral wealth. Sri K.P Singh Deo, who hails from a constituency rich in minerals and undoubtedly among the poor in terms of development said, "my contention is that in our effort to get in more investment which is probably required at the moment, we should not throw out the gates wide open without taking safeguards. In this connection, I feel that the human and environmental aspects are totally absent in this amendment which is coming after 42 years. The original Bill was enacted in the year 1957. I have gone through the amendment and annexures very carefully but there is no mention about the environmental hazards or the environmental problems and the ways to tackle them or prevent them. Secondly, the human factor is totally lost."

Sri Singh Deo also referred to the two other minerals of importance in the context of entry of MNCs he said, "Orissa, Madhya Pradesh and Andhra Pradesh have probably about 90 per cent of bauxite available in India. Therefore, while it is welcome that we must exploit bauxite for our own use but we should not allow the plunder of our ores by foreign companies. The same thing has happened in Kiriburu, where we sold it off, 30 years back, at Rs.66 a tonne, FOB but what we have got was finished steel and iron from Australia and Japan. This ore could easily be processed here and we could have given employment to our youngsters here. We have any number of technically qualified and educated young people. We should not allow this type of loot and plunder of our mineral ores. "

Despite such a clear statement of concerns and pleas to address concerns at the highest forum, the Parliament, the Government in bending-over-its-back to make way for the plunder by MNCs, whether Indian or foreign. It is ironic that today in a so called welfare state, operating on a written constitution, the focus of the Government is to sell off the country's wealth to cover its mismanagement and political needs. Further, it has the audacity to portray anyone who is aiming to protect the resources as vagabonds not interested in the development of the country and worst enough, even anti-national.

Brutal Globalising Economy will get a beating

The Government highlighted in its annual reports that the policy changes have attracted many multinational companies for investment in mineral exploration and mining. The loot of the Indian Economy is no less than the Iraq War, only these are internal and the affected have much less a power to defend. The justification here is that the weapons of Mass Destruction they have underneath their lands is the ore. Kashipur, Lanjigarh and now Kalinga, in the recent past the State and the MNCs have used the police, the legal systems including a pliable judiciary and political chicanery to convert the wealth of the nation into profits for the few. The State is using all its arms in ensuring that the country is bankrupting its own constitution.

Mining Charter of mm&P

The trends across the country indicate clearly that these ploys are going to be met with greater community resistance and action. While at Kalinga Nagar the administration including the police exhibited its worst face, the repercussions are going to be far reaching. In Assam already the people have nearly driven out a multinational. The demand for a total moratorium on all new projects and addressing the concerns of all the communities affected by the mindless pursuit of mining and industrialisation is now vibrantly spreading across the country. It is sad that what took hundreds of years to drive away with the sacrifice of millions of people is being offered in a platter. Land, Infrastructure, Indian PSUs and even atomic minerals are now being given away at values determined by external institutions. India is really up for distress sale – the distress caused by a corrupt political system which devours more and more money, bloated bureaucracies that have turned to be a slave of political and financial interests.

A 26 point mining charter has been evolved by the alliance and the charter is finding endorsement across several organisations. The charter is one sensible way to move forward without destroying the social, cultural and economic fabric of the country.

Moratorium on New Mines

Only a complete moratorium on new mines will make the industry and the government agencies to come to grip with the existing problems in already existing mining areas. The responsible transformation of the existing mines and associated industries can be the only basis for even brown-field expansion.