



**BEYOND COAL**

**IN INDIA**

**ENVIRONICS TRUST**

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## 1. Coalscam: A Remedy Worse than the Disease

In late August, millions of poor Indians rejoiced on a Supreme Court judgement on the allocation of coal blocks. It was further hoping that the subsequent order which categorically held all, except four, to be illegal. It was a reprieve from a forced displacement, loss of livelihoods and a life full of pollution, misery and exploitation.

People hoped that the breathing time given by the Court and a catena of laws passed over the last decade would enable it to highlight the grossly irregularity of the field level operations. It is an undeniable fact that a huge backlog of legacy issues of compensation, resettlement and rehabilitation still exist.

It was also redemption for a number of people who have been crying that the entire direction of development being pursued since the liberalisation has been undermining the basic tenets of the Constitution.

The process of allocation of natural resources to companies has been under the scrutiny of the CAG and the Supreme Court and the spectrum and the coal allocation scams are the latest among over scores of such big and small scams that have peppered the so called “growth story” of India since 1991. In the coal scam alone, CAGs estimates varied between nearly two lakhs to over ten lakh crores of undue gain to companies.

While the CAG is spearheading globally on Environmental Audit, it would be a great service if the CAG also conducts a concurrent audit of the ecological damages and social equity issues and look at the issue from the larger prism of sustainability.

Justice in India, as all over the modern judicial systems, hinges on the questions raised by a petitioner. It then narrows it down to a set of specific legal questions and usually answers in binary and delivers a verdict. Whether it does justice to the cause is a moot question. However in this particular case, since the Article 14 and Article 39 A were invoked at some stage, stewardship demanded that the questions of equity, environmental soundness and self-reliance were also addressed by the court.

The Coal Mines Ordinance promulgated on 24<sup>th</sup> October, exactly a month after the judgment so completely undermines the constitution by legitimising all illegal players. The Government’s persistence and bulldozing through two rounds of ordinance and all the political jugglery of various kinds has reinforcing the general belief that political parties professing good governance are not aiming at human development but “keeping conflicts to manageable limits”. In doing so, they have persisted with and dependent on the oligarchs, just as much as the British used the Zamindars.

The State in India is in a terrible bind. The outfall of the scam was a huge debt given by State Institutions to profligate capitalists. The SBI claimed close to Rs 70,000 crores exposures to miners and downstream power projects. The RBI Governor indicated that the top companies were to repay debts of nearly Rs 2,36,000 crores in the last five years and have so far deposited only Rs 31,000 crores. So to save itself the State has to give the same corporate, who have made the financial situation vulnerable, more resources and perhaps more debts, forget the people who would be uprooted.

The tribal and particularly the poor are to face the greatest brunt of all this *en masse* allocations.

The massive number of people who will be displaced for this climate unfriendly ambition is stupendous. In the District of Angul alone over – lakh people will be displaced. These are the original inhabitants and perhaps the first stakeholders. In Jharkhand, the fresh proposals add to a whopping 70000 families to be displaced for coal mining and related projects. The ordinance which has been brought under the guise of the court order wants that this process of alienation of land to continue, even if the blocks do not get auctioned and does not have even a single line about the fate of these communities.

Making it easier for the defrauders, it says that the new bidder will have all rights and no liabilities. This must be the first ordinance and law in the country where the defrauders are bestowed with rights and the right holders of the local area are being pushed into a corner with no recourse to justice. Even the past sins of these companies are absolved and only those who have a conviction and have been imprisoned for three years will be ineligible, which means all the people who indulged in malpractices are being accommodated by a so-called clean government. It arm twisted and several parties acquiesced to quickly make it a law.

The Supreme Court in Criminal Appeal No 11/2012 wherein the observed that “Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country. Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Article 14 to 17), liberty (Article 21) etc.” The ordinance and the rules, which provide no space for the communities, will no doubt, be a cause of lot of restlessness among the communities.

As the bidding process has unfolded, it is becoming clearer that crony capitalists can also collude and the transparency is limited to the state and the bidders but not to the community at large who will bear the consequences. Further, the transfer of environmental and forest clearances without even ensuring that the companies were complying is a mockery of the governance systems.

*...and as Gandhiji once said, “An unjust law is itself a species of violence”*

***R.Sreedhar***

***Convenor, National Coal and Thermal Power Gatherings***

***Managing Trustee, Environics Trust***



## 2. The Immediate Fall Out

Coal has been a cheap energy choice in the developing world, including India. Over 65% of the electricity is generated by it in this country. Being a widely available fuel mineral and natural resource, the rights have remained with the caretaker Governments to formulate policies which have seen transition from private to public to mix of private and public coal mines, currently the involvement of private sector has been limited to captive mining for their end use but the new Coal Ordinance indicates that even private companies can also mine commercially. On the contrary, coal mining has high social costs as it occupies large areas, in order to make way for coal but there is no equivalent importance given to the communities and their rights in such areas.

The coal scam unearthed and exposed the arbitrariness and exploitation of resource by the corporate-political and bureaucratic nexus and this was highlighted in the Supreme Court's August Judgment (2014), eventually the 204 Coal Blocks were adjudged as arbitrary and illegal and Supreme Court spared 4 Coal blocks from cancellation (*2 belonging to Sasan UMPP, 1 belonging to SAIL which are producing and 1 belonging to NTPC which will become producing in 2014-15*) and cancelled the rest of them.

The Government brought the new Coal Ordinance by which it would like to reallocate and auction the coal blocks by way of bidding. Coal India produces roughly about 500 million tonnes a year, this production is planned to be doubled by the turn of this decade, merely 6 years countdown to 2020! What this means is either production threshold has to be increased or newer mines within the coal blocks need to be opened as Greenfield mines. The contribution of private sector is the one which would increase substantially.

In addressing the irregularities in allocation of coal mines, the Government itself has arbitrarily adopted the Ordinance route and would like to auction the first set of 74 coal blocks, 42 among these are those which are kept in Schedule II (37 of them are already producing coal blocks i.e. coal mining is underway, rest of the 5 coal blocks are those which are on the verge of starting producing in 2014-15) and other set of 32 coal blocks are those which have been kept in Schedule III (which have to come into production at a later stage or where already the documentary and administrative processes have begun but pending and a considerable expenditure has been incurred in the end use plant) and these would be those blocks where auction will take place if the companies are having an end usage for coal utilization or for captive use. The Government has kept the liberty to add or replace any other coal blocks to these Schedules specified in the Ordinance. Schedule I is where the Government company or Corporation or JV with State will bid for auction and will have the right to mine coal for own consumption or sale.

In the said rules, Rule 11(7) indicates the norms for allotment of coal blocks which have no where mentioned the social obligation of the prior allottee or settlement of obligation before these blocks are notified for auction or allocation.

Also a notice has also been issued to prior allottees to figure out the intrinsic value of coal blocks (74 coal blocks; 42 in Schedule I and 32 in Schedule II). It has called for information from prior allottees on Geological reports, Mine working and closure plans, production details, Status of land and infrastructure and acquisition status, Status of R&R, Other investments, capital and operating costs, manpower details etc.



The state wise distribution of these 74 coal blocks is mentioned in the table below;

No.	State	Schedule I Coal Blocks	Schedule II Coal blocks	State Total
1	Jharkhand	5	13	8
2	Chhattisgarh	9	6	5
3	Maharashtra	0	3	3
	West Bengal	1	0	0
5	Madhya Pradesh	6	3	9
6	Orissa	1	7	8
7	Arunanchal Pradesh	1	0	1
	TOTAL	42	32	74

### **Environmental and ecological footprint including the social impacts Ignored**

1. During the transition both new player and the prior allottee are eligible for bidding in auction as per the conditions stipulated in the Ordinance. As coal mining has a huge footprint of unfulfilled social obligations, including aggressive use of Coal Bearing Act which is currently exempted from the new LARR Act, 2014 and thereby lacks detailed scrutiny; compensation, displacement, resettlement and rehabilitation, pollution and secluded habitations are few common issues which are left out.
2. Although details have been sought from prior allottees regarding status of Resettlement and Rehabilitation, it is unlikely that the pending issues of R&R will find any resolution due to poor track record in resettlement and rehabilitation by the State, PSUs, private parties. By merely calling for details through a notice but not mentioning in the rules about fulfillment of social obligations prior to auction or allocation has undoubtedly revealed only economic interests, the authority may find an intrinsic value of coal blocks and may pass the buck to the new bidder or allottee rather than first settling the issues.
3. While starting the allocation process afresh, the pressing issues in coal mining areas need to be addressed upfront and it should not merely be transferring of rights and obligations from the prior allottee to the new allottee and even if the prior allottee is eligible by depositing the suggested levy or adjudged a successful bidder it does not make him shielded from the pending obligations. There is no surety in the ordinance.
4. The economic thrust provided by the new Government in terms of rapid Urbanisation & Industrialisation (Industrial Corridors and Smart Cities), Manufacturing zones will require energy security to push the economic agenda and it hints at maximizing coal production with only a promise of tough penalties to self regulate the environmental harms which seems unrealistic with weaker regulation while avoiding the local and impacted people.
5. It is also a concern that 12 coal blocks among Schedule II and III are facing CBI's scrutiny and the government has also taken liberty in proposing them for auction and allocation.

The Supreme Court in its September 2014 order reiterated the fact that these "consequence proceedings" are intended to correct the wrong done by the Union of India; these proceedings look to the future in that by highlighting the wrong, it is expected that the Government will not deal with the natural resources that belong to the country as if they belong to a few individuals who can fritter them away at their sweet will. But the Coal Mines (Special Provisions) Ordinance

2014 overlooked the wrong done by illegal and arbitrary allocations by ignoring the costs people have paid and their future still looks bleak.

*Nishant Alag, Environmental Planner, Environics Trust*

### **3. A Note on the Coal Bidding Document Submitted to the Government**

#### **A Brief Introduction to the premise of Auctioning**

The literature on resource allocation systems generally recognises three likely advantages of competitive resource allocation systems. They can secure a larger share of economic rents of mineral resources to the state, address informational disadvantages of the state vis-à-vis private companies, and, when well designed, engender greater transparency in the rights allocation process. Competitive bidding systems produce best results where existing geoscience data indicates the presence of potentially high-value mineral deposits. Well-structured competitive bidding systems have the advantage of stipulating clear and transparent allocation rules that limit opportunities for favouritism and abuse. ***However, this requires that evaluation criteria, timelines, geological data and other critical information related to bids are clear to all potential bidders. Such information must also be well publicised.*** The effective design and administration of a competitive bidding system can present significant challenges in the context of weak institutions.

The FIFA (first-in-first-assessed) system, by contrast, encourages mineral exploration by the private sector in areas where little is known about potential reserves; is administratively less burdensome; and supports quicker processing of applications. The state must weigh the benefits of the auction system against the risk of delays in the development of the country's mineral resources, and other costs and risks associated with such a system.

Most countries that have implemented a competitive bidding system for awarding mineral rights have retained the FIFA system for areas where poor geoscience data is available. Policymakers therefore are not required to choose between a pure FIFA and a competitive system, but may opt for a mixed system. **Moreover, competitive bidding systems need not rely on a simplistic 'highest bid wins' formula, but should also contain pre-qualification criteria related to environmental, social and transformation policy goals.**

*Source: South African Institute of International Affairs, November 2013*

#### **On the APPROACH PAPER FOR AUCTIONING OF COAL MINES**

As the above quoted text indicates, a credible institution or institutions are required to draw up a robust system of bidding documentation and conditions. The Nominated Authority was established in October 2014 and the Rules (Coal Ordinance) were issued in November 2014 and subsequently Approach Paper for Auctioning of Coal Mines recently on 17.12.2014. While there is a varied opinion on allocation processes for natural resources, the decisions and timelines for inviting public comments have been rather too skewed and being pushed urgently when the huge Coal resource is to be auctioned. While 'transparency' is the pillar on which auctioning is being pushed for Coal and other resources, it is rather surprising that State being the custodian of resources can build upon the auctioning process without making it a wider publically



accepted process and move carefully as several examples of failure of auctioning have also taken place worldwide. Most of the coal blocks, if not all, are riddled by environmental and social issues, it would have been wiser if the coal block wise information on atleast these two aspects was kept in public domain and the system was build with primary knowledge at hand of failures, weaknesses, systemic problems – here the intrinsic value of Coal Blocks was thought about but it seems merely for the purpose of factoring in the costs as liability of one or the other bidder but this too was not kept publically open for people to see what has been reported stands the trust of people.

The pre-qualification criteria thus in the absence of all these aspects hints at lopsided development of resource while discrediting people who have given way for development, as the South African Institute of International Affairs interpret “Competitive bidding systems need not rely on a simplistic ‘highest bid wins’ formula, but should also contain pre-qualification criteria related to environmental, social and transformation policy goals”. For example, Liberia suggests EIAs as part of bid qualifying criteria.

It is humbly suggested that process about respective coal blocks or the Coal Dossier be made publicized with its environmental and social standing and pre-qualification criteria be strengthened by wider institutional debates and discussions and this merely should not be caught in the phrases like forward and reverse bidding alone.

As the principle understanding has been mentioned in the preceding paras, specific comments are being stated as below;

1. (1.2.4 Site Visit) - The bidders are being encouraged to undertake site visit and ascertain several aspects which are administrative, physical and legal and *any other matter considered relevant by them*. Nominated Authority as custodian of the whole process of bidding and auctioning of coal resources should ensure that there needs to be bare minimum criteria that the bidder must look for at site viz. grievances of community on issues of displacement, R&R, compensation etc. and should not leave it open to the prospective bidder. This would provide a primary interface with the community and will help assessing and tagging the activity in the milestones which are later to be monitored by the Nominated Authority.
2. (1.3 Proposed Schedule of Bidding) - While the irregularities in allocation of natural resources is being addressed by auctioning as criteria for allocation or by passing vesting order, one wonders that the same is taking away the right of inhabitants in coal areas to question the qualitative aspects reported by the prior allottee or the successful allottee, in the proposed schedule 1.3.1, atleast a window of opportunity should be kept at point 9 i.e. ‘Announcement of Qualified Bidder’ and all information should be made public, if the Nominated Authority believes that the process of auctioning brings in transparency, there is no harm or apprehension in producing coal blocks entire technical, financial and social information in public domain. As several of the coal mines are located in a respective state, making information online will enable seamless information availability between State and Centre and aid decision making. This will bring competitive yet responsible miners in justifying the auction process.



3. (3.4.4. Bidding in e-auctions of coal mines) - As the Supreme Court of India in its 24 August Judgment stated that coal allocations were arbitrary and illegal, the new coal legislation, rules and bidding document released on 17 December 2014 is missing the guiding principle of 'transparency in auctioning of natural resources viz. Coal'. Even at the stage of calculation of Intrinsic value of coal blocks (prior to bidding) from information received from prior allottees and those already functioning, there is no mention about the fate of communities and people who have been caught in the vicious cycle of impoverishment by means of displacement, loss of livelihood, incomplete and ignored social issues including Resettlement & Rehabilitation, unfulfilled promises of employment, compensation etc. It is acknowledged that Coal is required to fuel India's energy and industrial requirements but while missing people in the big picture, the idea of 'inclusive development' will remain an idea of and for a 'few'.
4. Merely transferring the liability from prior allottee to the successful allottee or continuing with prior allottee as successful bidder need to bring in these issues upfront but we find that only in monetary terms 'upfront payment' (as mentioned in clause 2.4.1) of 10% of the intrinsic value of coal blocks is being talked about in the document released on December 17, 2014.
5. How this whole process of selection of successful bidder, technical and financial bidding, and ownership of liabilities detailed out is placed in the public domain. Instead, 'social liabilities' shall be the primate responsibility of the Government and more even in the changed scenario of the 'Nominated Authority' for better serving the pending tasks and become more prudent in terms of meeting 'social justice', the opportunity of which has been given by the Honourable Supreme Court Judgement of 2014. Such expenditure shall be carved out from the intrinsic value of the coal blocks by the nominated authority and implement pending and liability issues upfront.
6. (3.3 Change in control during the bidding process) is uncalled for and the whole process shall start afresh to rule out any flaws that may emerge in adjusting change in control, as the decision to disqualify the bidder or withdraw the Vesting order from successful bidder in such a circumstance lies directly with the Authority, it is required that the auctioning rules be made in such a manner to plug such loopholes and discourage non-interested players. The Authority, if proposes to disallow change in control, it will send strong message to the bidders in the first instance itself.
7. As mentioned in 3.6.13 a) (under the major heading 'Selection of Successful Bidder') it is unclear whether social issues like incomplete compensation, displacement, employment, R&R would be treated as liability and amounts so secured will be reinstated to accomplish and implement such issues. As mentioned in the preceding para, the Authority should deal with priority and should not let such legacy issues to remain as unfinished agenda when the whole process is due to begin with new face. Instead we suggest that bank guarantee should take this 'envisaged expenditure on liability of community issues' into account and as suggested in 3.7.3 where bank guarantee will be deducted due to deficit in production, similar provision should also be there to the 'social issues' and a time period, preferably 1 year as mentioned for Schedule III Coal mines, needs to be suggested to implement the pending social issues beyond which Authority should utilize this bank guarantee and intrinsic value of coal blocks for implementing the same.

*Nishant Alag, Environmental Planner, Environics Trust*



## 4. SUBMISSION TO THE GOVERNMENT AND PARLIAMENTARY COMMITTEE

1. This submission is made on the implementation of THE COAL MINES (SPECIAL PROVISIONS) ORDINANCE, 2014; NO. 5 OF 2014 (the ordinance) promulgated on the 21<sup>st</sup> of October 2014 and the Draft Rules issued on 19<sup>th</sup> November 2014.
2. *This submission is made on behalf of mines minerals and PEOPLE (mm&P) an alliance of over 180 mining affected communities and support groups and National Coal and Thermal Power Gatherings, a process which is looking at the human and environmental costs of coal mining and thermal power projects.*
3. The numbers of affected people are so large and wide-spread and are unaware of the implications of the auctions proposed by this ordinance which will completely deny their fundamental rights. Further, "It must now be regarded as well-settled law where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured, so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him." (1981) Supp. SCC 87.
4. *The ordinance is inconsistent with Article 13 {Laws inconsistent with or in derogation of the fundamental rights}. All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. In this article, unless the context otherwise required, "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;*
5. The ordinance clearly favours specific segment of the society without providing Article 14 {Equality before law}; The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
6. The ordinance also undermines the Article 21 {Protection of life and personal liberty}, which states "No person shall be deprived of his life or personal liberty except according to procedure established by law."
7. In State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat & others, AIR 2006 SC 212, the Supreme Court held "the interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part IV of the Constitution (i.e. Directive Principles of State Policy)". The following Articles contain the Directive principles of State Policy: 39.

Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing— (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The ordinance particularly violates the sub sections (b) and (c) at a very fundamental level and does not support the cause of people who have been displaced or likely to be displaced. The current process is in direct violation of these basic tenets.

8. The importance and contentious nature of Land has been highlighted in the Approach to the 12<sup>th</sup> Plan as follows:

*“5.24 Rapid growth is only possible if a part of land which is currently used for agricultural purposes, or degraded forest land can be made available for building much needed infrastructure, establishing new industrial units, undertaking mining and accommodating the inevitable expansion of urban settlements. The questions that arise are: how is the land that is needed for these activities to be obtained, how are the existing owners of the land or those dependent on it for their livelihood to be compensated and how are the nation’s interests in preserving food security to be protected? The past two decades have seen all these issues become highly contentious.*

*“5.25 These problems have arisen in large part because the legal framework under which land has been acquired is outdated. It is based on the principle of ‘eminent domain’ under which the State can forcibly acquire land for a public purpose at prices which do not reflect the market price nor provide any premium to reflect the fact that the acquisition is forcible. Where the acquisition is of forest land, which is not owned by tribals but on which the tribals have traditional usufructory rights, the tribal communities have often not been consulted as is required under PESA and the displacement of tribal population has not been accompanied by well-planned resettlement and rehabilitation programmes. Independent estimates place the number of people displaced following development projects over the last sixty years at 60 million, and only a third of these are estimated to have been resettled in a planned manner. Most of these people are the rural poor without any assets, marginal farmers, poor fisher-folk and quarry workers. Around 40.0 per cent of those displaced belonged to Adivasis and 20.0 per cent to Dalits. Given that 90.0 per cent of our coal, more than 50.0 per cent of most minerals and most prospective dam sites are in Adivasi regions, there is likely to be continuing contention over issues of land acquisition in these areas, inhabited by some of our most deprived people.*

*5.26 The way forward is to move away from the colonial perspective of treating people as ‘subjects’, which is inherent in the doctrine of eminent domain, towards a vision of citizens, whose rights are guaranteed under the Constitution. Recognising that all the land needed for development cannot be obtained in a purely voluntary manner, there is need for a fair land*

*acquisition law which resorts to compulsory acquisition only where it is unavoidable and provides fair competition, and also ensures that Resettlement and Rehabilitation (R&R) of dislocated persons is built into the legislation. R&R provisions must be made mandatory and not reduced to what they have become, conditionalities without consequences. It also requires an unequivocal commitment to imaginatively exploring ways of rebuilding the livelihoods of those adversely affected by development projects."*

The position of the Government to its avowed objectives and approach are diametrically opposed to what is being followed in the ordinance, which seeks to through

"21. (1) All existing land acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, in relation to Schedule I coal mines, shall continue in respect of such areas of land in accordance with the provisions of the said Act. (2) All such areas of land which are not subject matter of land acquisition proceedings, in relation to the coal mines, under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 may be proceeded with by the Central Government in terms of the Coal Bearing Areas (Acquisition and Development) Act, 1957. (3) The State Governments which have initiated land acquisition proceedings under provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and all such lands which are also subject matter of the said Act in respect of Schedule I coal mines, shall—(a) not transfer any land to the prior allottees which have been acquired under the said Act; (b) continue the land acquisition proceedings till the appointed date; (c) for such Schedule I coal mines which have not vested in the successful bidder or the allottee, as the case may be, by the appointed date, continue the land acquisition proceedings for and on behalf of the Central Government; (d) upon the vesting or the allotment, as the case may be, after the appointed date, continue such land acquisition proceedings on behalf of the successful bidder or the allottee".

Thus the ordinance neither provides for any provision for resolving issues of resettlement and rehabilitation but confers all rights and immunities to the bidders. The process of continuation of land acquisition proceedings on behalf of the Central Government places the community in a compromised situation. The Coal Bearing Areas Act which was exempt under the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, with a statement that within a period of 12 months these exempt laws would also be brought under these provisions is being subverted by specifying the use of CBA Act.

9. Such a process of rapid allocation through whatever mechanism violates the Article 40 of the Constitution which states by providing no alternative for the communities to enable "40. Organisation of Village Panchayats. — The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government."
10. In *Shrilekha Vidyarthi vs. State of UP* (1991) 1 SCC 212, Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed: "It can no longer be doubted at

this point of time that Article of the Constitution of India applies also to matters of Governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional." Similar reasoning was rendered in Ramana Dayaram Shetty vs. The International Airport Authority of India (1979) 3 SCR 1014 and in Col. A.S. Sangwan vs. Union of India (1980) Supp SCC 559. Hence, it was submitted that judicial review of Government policies is permissible if it does not satisfy the test of reasonableness and against the public interest. Although, as asserted by the respondents herein that it is not the prima facie jurisdiction of this Court to examine what constitutes as "public purpose" or not however, as per judicial precedents in Kasturi Lal Lakshmi Reddy (supra) and other case laws as stated above, this Court is duty bound to interfere whenever the Government acts in a manner, which is unreasonable and contrary to public interest. In succinct, the Government cannot act in a manner, which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest.

11. Therefore we contest the preamble to the ordinance which in its nature of intent states: *AND WHEREAS it is expedient in **public interest** for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimise any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation; AND WHEREAS the Central Government considers it necessary to prescribe the conditions to rationalise the coal sector for mining operations, consumption and sale having regard to the **coordinated and scientific development and utilisation of coal resources** consistent with the growing requirement of the country; AND WHEREAS Parliament is competent to legislate under entry 54 of List I of the Seventh Schedule to the Constitution for regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be **expedient in the public interest**;*

12. The section defining mine infrastructure is sweeping - "(j) "mine infrastructure" includes mining infrastructure such as tangible assets used for coal mining operations, being civil works, workshops, immovable coal winning equipment, foundations, embankments, pavements, electrical systems, communication systems, relief centres, site administrative offices, fixed installations, coal handling arrangements, crushing and conveying systems, railway sidings, pits, shafts, inclines, underground transport systems, hauling systems, (except movable equipment unless the same is embedded in land for permanent beneficial enjoyment thereof), land demarcated for afforestation and land for rehabilitation and re-settlement of persons affected by coal mining operations under the relevant law;" .

Such a definition will include several assets which would be of the nature of public utility and vesting rights to the future owners is likely to deprive some of the bonafide existing users such as the local population and therefore should be more specific on the current situation with regard to the illegally allotted block.

13. The role of the body responsible for settling issues of displacement, loss of livelihoods and provision of compensation and is not clarified and is seemingly not a concern at all since, "(n)"prior allottee" means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have

been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No.120 of 2012; is neither allowed to continue his obligations nor is the new bidder charged of these crucial responsibilities as is clear from the following sections of the ordinance.

“13. Any and all alienations of land and mine infrastructure and creation of any encumbrances of whatsoever nature thereon which relate to Schedule I coal mines, made by any prior allottee after the 25th day of August, 2014 shall be void, save and except any registered security interest and charge over the land and mine infrastructure as registered by a bank or a financial institution or any other secured lender.

14.(1) Notwithstanding anything contained in any other law for the time being in force, no proceedings, orders of attachment, distress, receivership, execution or the like, suits for the recovery of money, enforcement of an security or guarantee (except as otherwise provided for under this Ordinance), prior to the date of commencement of this Ordinance shall lie, or be proceeded further with and no remedies shall be available against the successful bidder, or allottee, as the case may be or against the land and mine infrastructure in respect of Schedule I coal mines. (2)The proceedings as referred to in sub-section (1), shall continue as a personal remedy against the prior allottee but shall not be maintainable or continued against the land or mine infrastructure of Schedule I coal mine or the successful bidder or allottee, pursuant to this Ordinance. (3) Every liability of any prior allottee in relation to a Schedule I coal mine in respect of any period prior to the vesting order or allotment order, shall be the liability of such prior allottee and shall be enforceable against it and not against the successful bidder or allottee or the Central Government.”

Further the ordinance goes on to promulgate,

“(6) For the removal of doubts, it is hereby declared that—

(a) no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a Schedule I coal mine in respect of any period prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the Central Government or the successful bidder or the allottee, as the case may be;

(b) no award, decree, attachment or order of any court, tribunal or other authority in relation to any Schedule I coal mine passed prior to the date of commencement of this Ordinance, in relation to the land and mine infrastructure of Schedule I coal mines, shall be enforceable against the Central Government or the successful bidder or the allottee, as the case may be;

(c) no liability for the contravention of any provision of law for the time being in force, relating to any act or omission prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the successful bidder or allottee or the Central Government.” Thus it completely absolves all the entities which have or would be beneficiaries of the allocation.

14. Though the ordinance states that with respect to Schedule II mines,

“17. (1) On and from the appointed date, the Central Government or a company owned by the Central Government shall be deemed to have become the lessee or licensee of the State Government in relation to each of the Schedule II coal mines, in respect of which a mining lease or prospecting licence has been granted prior to the date of commencement of this Ordinance, as if a mining lease or prospecting licence in relation to such coal mine had been granted to the Central Government or a company owned by the Central Government and the period of such lease or licence shall be the maximum period for which such lease or licence could have been granted by the State Government under the Mineral Concession Rules, 1960, and thereupon all the rights under such mining lease, including surface, underground and other rights shall be deemed to have been transferred to, and vested in, the Central Government or a company owned by the Central Government.

(2) On the expiry of the term of any lease or licence, referred to in sub-section (1), such lease or licence shall be renewed, by the State Government, in consultation with the Central Government for the maximum period for which such lease or licence can be renewed under the Mineral Concession Rules, 1960.

(3) As it is considered expedient and necessary in the public interest and in view of the difficult situation which has arisen, the powers of the State Government, under the Mines 67 of 1957. and Minerals (Development and Regulation) Act, 1957, to prematurely terminate a prospecting licence or mining lease, shall stand suspended, in relation to Schedule I coal mines, for a period of one year from the date of commencement of this Ordinance or such other period as may be notified by the Central Government” it is totally silent on the responsibilities of resettlement and rehabilitation and other provisions which need to be implemented.

15. The ordinance tries to take away the basic right of citizens of seeking judicial recourse by stating “26. No court shall take cognizance of any offence punishable under this Ordinance or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or nominated authority or the designated custodian.”
16. The Act also completely undermines the provisions of various other laws and also provides itself with such immunity, “27. The provisions of this Ordinance shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.”
17. The issue of natural resource allocation and that too in quantities exceeding 25 percent of the known coal reserves of the country and which will change the very geography and demography of large tracts of the country need not be hurried through the route of an ordinance. The implementation of the Act should only begin after a proper bill is placed in the Parliament and debated to identify the pros and cons of the process.
18. The Government seems to be in undue hurry in providing for such sweeping clauses “30. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for



removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance. (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

19. Any process of resource allocation must explicitly include the concerns of the people affected and the implications to long term ecological well-being. In keeping with this Government's thrust on transparency all the details of the blocks being put to auction including the number of people to be displaced, the land and forests that would be lost, status of resettlement and rehabilitation should be available in public domain.
20. In the minimum, the Rules framed should have explicit clauses that ensure the rights of those whose land and natural resources are at stake will be consulted before the blocks are put into auction.
21. In its urgency the Government has published the ordinance and the rules only in English and the time period given is so short that the actual stakeholders are completely in the dark about the future of their land and resources. A concerted effort to provide in vernacular to the communities in the regions where the coal blocks exist will be imperative to ensure communities can participate in the process.
22. It should explicitly ensure that all pending issues of compensation, resettlement and rehabilitation are independently evaluated and specific liability is imposed on the company which will ultimately benefit from the natural resource.

## 5. Summary of Proceedings of the Third National Coal and Thermal Power Gathering, Dumka, Jharkhand

Sreedhar, the Convenor of the National Coal and Thermal Power Gatherings welcomed the participants and briefed them about the ongoing process and the update of the efforts that were ongoing across several states. He warned that the economic growth sought by the State is in such a manner that will involve lot of displacement, pollution and destruction of natural resources and therefore will never be sustainable. He asked everyone to be more vigilant and seek all official mechanisms to stop destruction and direct the growth in more sustainable pathways. He informed about the growing database on all the coal mines that are slated to be opened and the thermal power plants and how in the coming years we will have all the existing and potential coal mining data.

Munni Hansda, the host in Dumka for Adivasi Ulgulan Manch welcomed the members and informed about the interest locally generated on the meeting and the solidarity sought by the agitators of the Damodar Valley who have been protesting for failure to rehabilitate them over fifty years and sought the house to schedule a visit to the protest site. Environics prepared a brief note on Pachwara the key project under protest.

### State Reviews

#### Jharkhand

A historical perspective was presented on community command over natural resources in the past, the most prevalent resources viz. Jal, jangal and jameen (Water, Forests and Land) were close to the communities. They used to manage it effectively. Our forefathers never dealt with paper work for such resources as the governance was in the hands of people and there was no pressure of industries or external forces which has increased exponentially now. In 1800s, Sidhu-Kanu and Birsa Munda also fought for the people's rights – their land, resources. The situation has changed only for the worse from that time onwards. A brief review of political situation of Jharkhand and how industrialization and mining has become the only mantra among decision makers was highlighted. Concerns were raised that in this race, adivasis and other vulnerable groups have been left behind. Dhanbad, which was once a rice bowl is the most polluted area and River Damodar is dead. The geographical conditions were tough in the old times, dense forests were there and the place was inhabitable, adivasis developed this region, converted it into land, agricultural fields, so we did not own anything from the government so how Government can claim its right over this land. We developed our cultural and religious belief. Our forefathers have struggled hard and earned our future but the government has made bleak by making us sidelined and crushed like insects.

In Jharkhand, adivasi population is on decline whereas the geographical region in tribal areas is large. Most of the mining activity is in these adivasi areas and so do the struggles and movements continue to happen in these regions. Government is trying to bring schemes and plans (yojanas) in these regions for mainstreaming. The reduction in the percentage of adivasi

population should be raised as an important question as adivasi dominated area was 72% in the erstwhile state of Bihar and has reduced to merely 27% after the formation of Jharkhand.

Mining provides royalty to the state and the nation but mismanagement and hardship to the people has been deflected. These should become prevalent issues during the upcoming elections in the state. Displacement in this region is a large human issue and people have no clues and answers to these problems and coming years will see more and more mining by multinational companies, the problem seems to be growing and pertinent questions should be raised and solutions sought.

This region falls under the Fifth Schedule, SPTA and CNTA, violation of constitution, court orders, other developments shall be answerable by the Hon'ble Governor as the custodian of these constitutionally protected areas. But such authorities including the government are mute spectators which this house needs to question. The persons involved in violation of provisions under SPTA, CNTA and other allied laws should be charged with criminal conspiracy but nothing has been done. Environics produced a brief document on the land laws of Jharkhand so that people could understand the key provisions.

Maximum occurrences of minerals are in tribal belt. Constitutionally the apex body is the Tribes Advisory Council (TAC) and in Scheduled states, we have to pressurize TAC and educate them also to include tribal issues and make them empowered. We convinced 14 members. We should use this via media to make our issues reach with strength and logic to the government and the Governor. TAC is like Vidhan Sabha for tribals and we have to make this power realize and people will also feel strengthened viz. struggles, movements and alliances. In the Vth Schedule (8% adivasis) for administration and governance of such areas, no non-compliant laws shall be passed. In Kolhan, we have not even allowed government officials and state machinery / ministers to enter our area and in the forthcoming elections, this would be a huge challenge. During 27 September meeting of TAC, it was decided that the sub-committee on tribal issues on ICHA dam will survey the area on 11 October. ICHA dam continued struggling from 1978, 123 villages were affected. We directed this struggle into cultural impacts. We mobilized the whole Ho Samaj.

State has bypassed public hearing, gram sabha for land acquisition. People have been drawn into false promises like employment etc. (while bringing mining projects). We demand equal implementation of laws on companies and whosoever has violated the provisions of these laws shall be prosecuted.

Gram sabha has been held primary body but in reality the gram sabha is being negated as was happening in the British regime for faster penetration into tribal areas for acquisition of land and other resources.

Coal is a commodity but land, water and air is not a commodity. Alternative to coal is available but no alternative for land, water and air so why to extract coal across the resource belts. Our pledge is thus to safeguard our resources and we will not even think twice to stop coal even if we have to pay the cost with our lives.

## Chhattisgarh

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Many struggle groups opposed their call to observe community's first right over land to remove coal. If the government thinks that for the development of country coal is to be extracted, we believe that we cannot allow this contractual mechanism of giving our resource to few corporates, it is our land and coal is underneath, our people are the first right holders and owners of this resource and if need be in such circumstances we will extract coal and not allow others to dismantle our structures.

We have seen the fate of PESA, fabricated consent. It is not that we want to extract coal for our livelihoods, we are doing agriculture and continue to do so but if someone gives us a guarantee that no industrial lobby or company will extract coal from our land in the future we will stop our campaign and protest.

262 people from other states who have purchased 1100 acre in Raigarh District were identified. Since it is illegal to have purchased land belonging to tribals these lands have been now restored to the right holders after prolonged process.

We registered a producer company. Several other groups object on the ground that we should not extract coal. The fact is that we would not like to extract coal from our land but in circumstances where we are forced or the policies drive us to extract coal we are obviously the first right holders of this coal under land. If someone gives us guarantee that no coal will ever be extracted, we are ready to withdraw our struggle which is for securing our land and resources. Rs 52 crores worth of coal is extracted from 1 hectare, how our land value can be only Rs. 5-10 lakhs. Secondly those villagers involved in usual labour works and if he removes 2.8 Cu.M. coal per day, its value would be 11-12,000 INR approximately, he can give 5 times more royalty to the government and Panchayat. We will not need anything else from the government or their schemes. We have with the help of Environics Trust initiated a computer centre to train local people and also to document our struggle. The companies have been trying to lure the younger people with promises of establishing computer and other skill training centres.

## **Odisha**

After the Second Coal and Thermal Power Gathering in Angul in April this year several villages have become active. The idea is to bring together all the villagers of 40 almost contiguous coal blocks in the region. A study undertaken with the support of Environics and Oxfam India of the unwed mothers in the District was very revealing of the dire conditions of women in the mining areas. We plan further to meet all communities and highlight the massive implications these projects will cumulatively have in the region. We will do this through film screenings and other programmes to involve maximum number of people.

The Sundergarh district and Jharsuguda region on the immediate watershed of Hirakud Reservoir is highly impacted with a number of coal mining projects and polluting industries. Despite being put under moratorium for new projects, it was lifted by the government with very little improvement. Almost all the mines and industries seem to have violated the norms.

Few cases for seeking remediation and payment of compensation have been planned in specific projects and interactions with Environics and LIFE is ongoing on specific projects.



## **Madhya Pradesh**

The Barethi project in Chhatrapur District by NTPC has already initiated with some land acquisition proceedings. The villagers have sought the support of the group to initiate a process of understanding the implications and the reality of the so called benefits to them. We also relate to the other groups that are active in Singrauli and Siddhi district. We need to connect with people in Mandla North Block.

## **West Bengal**

Raniganj coalfields – Jharia to Asansol region has been extracted too heavily and problems are several, there is no accountability in earnings, damages etc. there is enough coal still left in this region. Since it is the oldest coal mining regions in the country we should target this region and come up with comprehensive plans. We are preparing a document on the coal-fires and the impact it has on communities and how we could bring together workers and communities in a joint action programme.

## **Telengana**

The new state is looking at coal as a cash-cow. Therefore an significant increase in coal mining is definitely on the anvil. To this effect the state has brought in the former CMD of Coal India Limited who hails from the state to advise them on increase and improvement in coal mining.

.All the safeguards which were earlier in place are being systematically dismantled. The problems of mine fires are still not recognised in this region. Post-mining issues have to be highlighted and there is a need to understand and address the concerns of people living above thousands of acres of land above underground mines.

## **Gujarat**

The lignite mining in Mangrol is expanding and our groups are involved in understanding and protesting in its expansion. We have been highlighting the impacts of these mines. The thermal power plants in the Kutch region are a matter of concern and have assumed international proportions with several other groups also contributing to the struggles.

We need to understand better about the kind of coal being imported and used in the region.

## **Resolutions**

- Demand a CBI enquiry into the police firing in 2008 and withdrawal of all fabricated cases in connection with these protests.
- Utilise the provisions of Scheduled Tribes and Scheduled Caste Atrocities Act, in which due to the efforts of our groups the denial of forest rights has also been included as an offence and a government official can be penalised for the same.
- Demand dropping of all fabricated cases in all the mining areas.
- Effectively use the provisions of RTI to extract maximum information of the projects.
- Improve our knowledge on laws and legal recourse

- Step up work in the 42 coal blocks now to be handed to Coal India Limited and the 74 blocks which are likely to be auctioned.

Sessions were held in understanding the TOR provided for preparation of EIA Reports and various stages in which one could express their concerns and the relevant authorities. Similarly the Formats presented for seeking clearance was explained so that groups could understand the import of such documents.

## 6. JHARKHAND LAND LAWS

### Santhal Parganas Tenancy Act, 1949

The Santhal Parganas Tenancy Act was formed in 1949 to frame laws relating to landlords and tenants in the Santhal Parganas region. It extends to the whole of Santhal Parganas divisions comprising of Dumka, Sahibganj, Godda, Deoghar and Pakur.

Prior to 1949, there was no codified law of tenancy. Most of the tenancy laws were derived from customary laws, Record-of-rights, duties of each village and decisions of civil and revenue courts. This Act helped in codifying laws relating to exchange of raiyat (tenant) lands, subletting of raiyati holdings, rate of landlord's fees on transfer, right of raiyats relating to tanks and water reservoir, grazing land and jaherthan and rights of raiyats on trees grown on his lands.

#### **Important provisions:**

1) Rights of Raiyat in Respect of Use of Land: Sections 13, 15, 16, 17 and 18 of the Act give rights to raiyats in respect of use of land.

- a. Section 13 states that a raiyat may use the land in his holding in any manner which is authorized by local usage or custom and which does not materially impair the value of the land or render it unfit for the purpose of cultivation.
- b. Section 15 provides rights to a raiyat to manufacture bricks and tiles on his holding, free of any royalty or other charges for domestic or agricultural purposes of himself and his family.
- c. Section 16 gives a raiyat rights to construct bandhs, ahars, tanks, wells, water reservoirs and channels on his own holding for the requirement for drinking or other domestic use and irrigation purposes. The raiyat can also enjoy the fish and other produce from such water reservoirs for free of charge.
- d. Under Section 17, a raiyat may plant trees, orchards, bamboos and lac or rear silk cocoon on any land in his holding. He may cut, fell and appropriate trees and bamboos, except mahua trees, standing on his land. Flowers, fruits and other products of such trees may be appropriated by the raiyat.
- e. Under Section 18, a raiyat may construct kutchra or pucca buildings for domestic or agricultural purposes of himself and his family on his holding of the land.

2) Transfer of Raiyat's Rights: Section 20 of the Act attempts to prevent raiyat's rights on his land holding from getting transferred. Section 20(1) states "no transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or



agreement, express or implied, shall be valid unless the right to transfer has been recorded in the record-of-rights, and then only to the extent to which such right is so recorded”.

Section 20(2) protects the right of aboriginal raiyat on his holding. It provides “no right of an aboriginal raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to any one but a bona fide cultivating aboriginal raiyat of the pargana or taluk or tabba in which the holding is situated”.

Section 20(5) of the Act gives powers to the Deputy Commissioner to evict a non-aboriginal transferee from the land belonging to an aboriginal raiyat, which is in contravention of Sub-section 2. The Deputy Commissioner may evict the transferee from an aboriginal raiyat’s land without paying compensation and restore it to the transferor or in case the transferor or his heir is unavailable, then resettle it to another raiyat belonging to the Scheduled Tribes.

3) Section 24A makes the registration of a transfer of homestead or any portion of it mandatory. If a raiyat transfers his homestead by sale, gift, will or exchange, the transferee must register such transfer in the office of the landlord of the village.

4) Acquisition of land: If any landlord of village intends to acquire holding or part of the holding of any raiyat, he may apply to the Deputy Commissioner for sanction to acquire such land. The purpose of the acquisition may be for purposes of erecting buildings or for any religious, educational or charitable purposes, or for mining, manufacture, or irrigation, horticulture, agricultural improvements or giving effect to any national policy of the Government. The Deputy Commissioner may after due inquiries on the purpose for which the land is sought. He may also ask the raiyat or other interested persons to file objections for such an acquisition.

### **Chhotanagpur Tenancy Act 1908**

The Act, which extends to the North Chotanagpur, South Chotanagpur and Palamau divisions, aims to protect the traditional lands of tribals in Jharkhand. The Act is placed in the Ninth Schedule and hence, is beyond judicial review.

The Act classifies different tenants as tenure-holders, raiyats and Mundari Khunt-kattidars. It explains tenure-holder as a person who has acquired land-holding from the proprietor for the purpose of collecting rents or bringing it under cultivation by establishing tenants. While raiyat is a person who has acquired land for cultivation, Mundari Khunt-kattidar is someone who has acquired a right to hold jungle land for cultivation.

#### **Important provisions:**

1. An occupancy-raiyat (a raiyat who has the right to occupy land held by him) has the right to use land to manufacture bricks or tiles, excavation of tanks or digging of wells to provide supply of water, and erection of buildings for domestic or agricultural purposes.





The raiyat may also plant trees and bamboos, appropriate flowers, fruits and other products of any trees, rear lac and cocoons on trees (Sections 21 and 21A).

2. Under Section 22, an occupancy-raiyat may not be evicted from his holding he has impaired the value of the land or broken a condition under the terms of contract between himself and his landlord.
3. Under Section 46, a raiyat belonging from Scheduled Tribes (ST), Scheduled Castes (SC) or Other Backwards Castes (OBC) may transfer his land to a member of ST, SC or OBC only after attaining permission from Deputy Commissioner.
4. If a landlord desires to acquire tenure or holding of land, he may apply to the Deputy Commissioner for such an acquisition. The Deputy Commissioner shall conduct an inquiry into the purpose of acquisition, authorize the land acquisition and determine the compensation to the tenant (Section 50).

## 7. PROCEEDINGS OF 5TH GENERAL ASSEMBLY OF mm&P

27 FEBRUARY TO MARCH 1, 2015 IN ANANDWAN, WARORA, MAHARASHTRA

Conduct of mmP General Assembly- mines, minerals and People (mmP) network held its biennial meeting in Anandwan, Maharashtra in February 2015. The mmP network has more than 250 grass-root communities and groups which are impacted by mining and its allied activities. Members in the meeting narrated their experiences and their struggles and planned for activities which could address problem areas in mining. Many members reported problems due to dust in their region and many health problems being caused. They were told about the protective mechanisms including engineering control methods to work and also to collect evidence related to different employers and diseases.



mines minerals and People (mm&P), a national alliance of mining affected communities in mineral rich states organised its fifth General Assembly in Anandwan, Warora from 27th February to March 1, 2015. It was in 2004 when mm&P organised its first general assembly in Anandwan in the esteemed presence of Baba Amte who chose to work with the most neglected people suffering from leprosy and called Anandwan as an abhyaranya, a sanctuary. Today Anandwan stands as an example of an integrated commune which is self sufficient, has given respectable lives to the people displaced by social stigma in the society and has ventured into several income generating activities right from land based production systems to skill based activities.

In the Welcome remark, Chairperson and Secretary General addressed the participants by welcoming them to work ahead for the cause of people and their natural resources. A brief summary of participatory and community based works undertaken by the alliance were shared with the participants which included continuous inputs and advocacy on the MMDR bill right from 2010, several training programmes conducted for the alliance members in their regions, bringing people together from the mining regions to discuss coal mining, field report on unwed mothers in Angul, conducting executive council meetings and supporting action research and local events organised by the members. Secretary General urged the members to integrate their efforts to address the menace of mining and more so to bare open the scourge of illegal mining which is rampant in the country. With the changing Governments, social structures tend to adapt to new challenges and therefore mining in its new avatar is posing newer challenges never seen before, like that of auctioning of minerals which is being tried for the first time in the country.

Secretary General addressed the participants by saying that we have to reach out to the MPs/MLAs to raise our voice in the Parliament and as mining is going to be even intense now with the auctioning process, the coming years require integrated work.

## Reporting from Members from States

The first session was devoted to presentations by states. The states of West Bengal, Andhra Pradesh, Telangana, Orissa, Chhattisgarh, Jharkhand, Himachal Pradesh, Uttarakhand, Delhi, Bihar, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh presented state wise summary of challenges and concerns before the house.

### ORISSA

Speakers from Orissa viz. Mr. Purohit, Ranjit Pattnaik, Basant Pradhan, Nicholas Barla and Manbodh Biswal from Talabira affected area spoke about various issues from their regions. Coal mining was the central theme around which speakers focused their talk. Coal mining began in Talcher coalfields over the last 7 decades and there are 8 operational mines currently but the worry has consistently been one surrounding the environment-quality of life and another about displacement and incapable administrative response to social and cultural issues. In summers, the temperatures rise above 55°C which makes it worse and fugitive dust envelopes rooftops, fields and deteriorates health among all walks of life.

Chhendipada is one of the blocks in Angul District and is being eyed for coal mines, one where mm&P in April 2014 held a Coal Gathering i.e. near to Muchakutta Coal mine has been stopped after peaceful protest by the local villages. Since majority of the people were not in agreement for coal mining leading to displacement, they challenged the process of land acquisition and public hearing announced by the district administration. Eventually the public hearing had to be cancelled. On the day of public hearing there was a local ritual where women keep a fast but thousands of people gathered to show their commitment for saving the area from coal mining. Now the coal mines are being auctioned but this very mine is still awaited to be listed in the auctioning procedure.

Talabira – I where Hindalco Industries had a coal mine very near to the Hirakud Reservoir left many villages including Khinda under various economic and environmental pressures. Even when the Pali Sabha voted against expansion of the mine, the district administration held parallel meetings away from the affected area and completed the formality of giving a go ahead for mine expansion.

### TAMIL NADU

Speakers from Kanchipuram District, Tamil Nadu viz. Thamizhinian and Devaraj spoke exclusively about sand mining in River Palar and developments related to it. They provided a short documentary alongwith the fact finding report on sand mining prepared by PUCL. When this report was published, the District collector was suspended on the Orders of Chief Minister. They mentioned about intense mining in Madurai where a big scam in Granite mining was exposed (supposedly greater scam than 2G scam) and in Tuticorin beach sand is being mined mindlessly where Ilmenite is found and is most important ore of titanium. They say that there is less water and more sand extraction in River Palar and many others, the estimates tell the story for Kanchipuram District alone! Government controlled rate for sand is Rs. 315/tonne whereas in open market rate of sand is between Rs. 7000 – Rs. 12,000 per tonne – on these estimates, Rs. 5875 crores worth of sand extraction was done but in actual, the Government got only Rs. 76

crores from this sand mining, meaning a huge sum of Rs. 5800 Crores was lost to illegal sand mining by the mafia. They would like to contribute to the mm&P alliance and work in future.

## **JHARKHAND**

Santhal Pargana in Jharkhand is tribal region with rich mineral wealth. People are fighting in coal mining, thermal power plant, dam area, bauxite area, in our area struggle from 2005 continues and we have got positive response. After cancellation of coal blocks there is no respite and struggle continues. A reference to PANEM coal mines was given which began in 2004 (in Pachwara), people have not got any employment and compensation even after 11 years. Assuming that if 26% share is given to the people, one can imagine the amount but it is all in the vacuum. If we ask our own rights from the Government, we are termed as anti-state. But there is a need to get strengthened and with the continuing trend no benefit sharing is going to come community's way so why people will support industrialisation, the need is to strengthen our Gram Sabha. For Example in Godda District of Santhal Pargana Jindal Company has entered and peoples land is under stake but people are apprehensive about taking on lawlessness. We are promoting only the principal of Gram Sabha's primacy in decision making (PESA) to tackle the tactics of government which tries to dilute the collective understanding of the people, during public hearing single village was asked to come rather than all affected villages together to create a fear among villagers and make them agree in parts. We rejected this approach and said we are not in agreement of allowing the company; several cases were filed against us which inflicts fear in the mind of people that they will face the same fate. People in Potka, Hazaribagh, Dhanbad, Bokaro and many other districts are struggling against this corporatization. The election process is not fair and it is only to show vote politics supremacy and people are being drawn into this to accept the model of development, there is lack of political awareness. We have to think about all this.

Western Singhbhum is again a tribal dominated region and people are composed. Gram samaj and Gram sabha is supreme and the need is to catch those people who have been elected to legislative and constituent assembly to make enabling laws which are in conformity with the region populace and cultures. We need collective efforts across the tribal areas to make legislators understand the problems and work towards effective resolutions.

## **MADHYA PRADESH**

Around a decade back, in year 2004, very few people were there in MP on mining issues. But now in 20 districts we have people working on mining and now we have a mazdoor sangathan in the state with the efforts of mm&P and enabling support provided. mm&P State committee was constituted in 2013-14 and there are many members from 16 districts - Satna, Rewa, Bhind, Buxwaha, Chhattarpur, Khanjuraho, Jhabua, Khandwa, Panna,

Diamond mines in Panna were being run illegally also which have reduced now, similarly off the 111 stone mines, now it has reduced to 56. We have worked on the issue of occupational health and identified 122 silicosis victims in Panna alone and have taken the issue to the district administration but we were denied any relief. This took the turn of a collective effort and now some relief is being expected. Now 36 victims have been identified and recognized. On 11 August 2014, NHRC held a public hearing in Bhopal on the issue of silicosis, families of 4 deceased victims were promised to be given a relief of Rs. 3 Lakh each but it is not an easy task

to get relief. The state government has been adamant that since workers issues comes under Central Government(MoLE) they cannot process this relief as there is no particular head assigned for such issues, the struggle is continuing with the state and is being tracked with NHRC.

There are other problems for villagers due to their displacement from the protected areas (Panna Tiger Reserve) which are being moved away without completing the process of settlement of rights. A programme on women empowerment is undergoing and basic results are being compiled for arriving at need assessment and women have taken part in stopping displacement of Umrawan as of now. The Governments are in the process of alienating people from their roots.

People from the Mahan Sangharsh Samiti spoke about the Singrauli region. Singrauli has 9 operational thermal power plants and this region provides coal from the NCL mines located in this region but this is not very great because the air is also polluted and toxic elements like mercury are also present in the atmosphere and land, respiratory diseases are troubling people. Struggles are also going on in Amelia coal block also where Essar and Hindalco have a joint venture and Mahan has been kept away for the time being from coal auctioning, this is the collective effort of 50 villages around this region. We will require support from all of you once this block is cleared for auction in future.

## **GUJARAT**

Ashok Chaudhari who is a eminent Tribal activist and ex EC member from Gujarat started with Gujarat's model of development which present by existing ruling party of our nation. Gujarat has a mercantile ethos from many centuries. Unfortunately present Prime Minister and rulling party head from Gujarat. Most of the corporate owners also from Gujarat like Adani, Tata and Ambani. Gujarat has two faces most of the middle class peoples are wants a development with exploitation of natural resources. Other face of Gujarat those who belongs from vulnerable communities are facing number of challenges by Government policies. Gujarat has long coast line with rich minerals like lime stone, Black stone, Lighnite etc. In South Gujarat we have lignite, stone, limestone and sand mining. In north Gujarat we have marble, granite. Since two decades local struggle continue for community control over natural resources. We started movement against illegal mining in 5th scheduled area of Gujarat particularly send mining and stone mining in river belt. We had organized state level convention at Kosambia village where Mr> Sreedharji chair persone of mm&p presented. We also filed a case against mining and tribal land alienations in Surat and Tapi district.

Ashok Shrimali EC Member of mm&p from Gujarat also spoke about intervention and efforts by mm&P, Enviornics Trust and Samata. As decided in last assembly at Vishakapatnam, Advocacy and engagement with palamenarians, capacity building regarding existing laws and policies, Public hearing on the issue of children and mining etc in western region and national level. In the initial phases of development, private companies purchased land from the large farmers. Advocacy with the Parliamentarians in the Western Region on the MMDR bill. We worked with the people on the ground in the western region to know the mining situation. The way Government is withdrawing from welfare of the people and bringing corporates to manage our resources is a worrying thing. Instead of asking from the Government we should be in a position

to give and manage our resources and services, whatever Party's government comes they have a single motive to exploit the resources and keep people in lurch. Where vested interests creep in, its difficult to expect justice. We all as mm&P and other networks have to come together and face whatever comes our way.

After hearing from the entire state representative, the situation looks very scary and it is actually, especially on exploitative nature of governance on natural resources. He shared an instance where Gandhi ji was in Sabarmati Ashram and to quench his thirst he took a tumbler of water, people said you take more water to which he replied that this belongs to the society, I'm entitled to a little which I have consumed. The only way out is being associated and work for alternate solutions to human problems and we have to take inspiration from this very place we are sitting now.

## **RAJASTHAN**

Works on unorganized workers in the state of Rajasthan and have taken steps ahead. They have been able to address the silicosis issue (216 victims were identified) and were able to enable provision of relief to 22 widows of silicosis victims in the beginning followed by 8 more such cases where government gave Rs. 3 lakh each to the widows.

As per Supreme Courts order, rehabilitation of silicosis victims was to be done but the process has been undecided and has not taken any shape resulting in death of already suffering victims, we pressed for granting Rs. 3 lakh to them also. While working on this pneumoconiosis board was formed after dialogues with Chief Secretary and NHRC which will be helpful in diagnosis of silicosis victims in the state. Many of the victims are dead but those identified and living (232), the government has kept aside a sum of Rs. 61 lakhs for them. Silicosis has been categorized as an epidemic disease among the stone quarry workers and a fund has been created and meets two times a year to decide upon distribution of this fund to the victims. 19 districts in Rajasthan have the incidence of silicosis and we as a labour union in the state are working towards the welfare of people and expect that more people will get benefited before they succumb to death. All the arrangements like diagnosis, pension, widow women aid etc. have to be streamlined and pushed up for faster coverage among the affected as more than 400 victims have already died due to silicosis.

As part of the labour union work revolves around providing aid to the silicosis victims and their widows in terms of timely diagnosis by government hospitals and facilities twice a month and helps them know more about the disease. Bansi lal added that it is by everyone's effort that the results are forthcoming and in a recent circular issued by the mining department on 18.02.2015, it has issued a public appeal for adoption of wet drilling and use of masks in sandstone mines as a measure to prevent silicosis and also to register mine workers and give notice of opening as per Section 16 of Mines Act, 1952 failing which mining licenses will be cancelled from 01.03.2015 onwards

## **UTTARAKHAND**

in the last 4 years, everyone has heard about the natural fury in the hills like the Kedarnath disaster. There are four types of mining like sand mining, stone, and soapstone and building material. Sandstone mining is expanding in middle hills where we have tried to generate awareness and stopped mining at some places. Soapstone was extracted from long but now it

has taken more commercial shape and is being mined in large areas which are critical like in Bageshwar, Pitthoragarh and Almora. As the area is large, we are targeting smaller units of people to combat the ills of mining in few districts. This is still a big challenge before us. River mining is extensively happening across the state or it is planned to become operational and we need more legal and technical support from mm&P and other members to understand and take right steps. How we can use RTI act in a rightful manner is another aspect we request to be made clear to the people. How smaller struggles can come on one stage for better coordination and strategy. Another challenge is Pancheshwar Dam which will affect Nepal and India's communities and need to be understood.

### **TELANGANA**

The newly formed state has minerals like coal, granite, stone, sand mining. Government's logic to mining is promoting mining for economic development. The way Government is changing laws like MMDR for increasing mining, it is promoting corporate inroads into mining. What will the future generations gain from today's mining as the resources are non-renewable. There are mining laws but those not following law are progressing and are being supported widely by vested interests. We need to do something on this and spread this awareness across all walks of life. We have to make action groups across the mining states and do this work. There is a changing trend to close underground coal mines and encourage opencast mines which have their own advantages and disadvantages (in terms of operational issues) but opencast mines are more mechanized and what would happen to the workers working in the underground mines now, we have to raise this issue before the parliamentarians also. Also the Government is giving open hand in terms of increasing the mining lease area as suited for mining investors. The way government is envisaging development, it won't reap results for the community.

### **HIMACHAL PRADESH**

It looks like all the livelihood sources are at stake due to government policies focusing towards exploiting natural resources, in HP there are large number of dams, sand mining, cement plants, limestone mining and now commercial tourism. We as HNA have been working with communities and struggles. Sant Ram shared an experience as an RTI Activist with the HNA network, while he was traveling he was stuck in a traffic jam, upon asking the people around he came to know that a hill is being chopped for mining purpose that too very close to the National Highway, all rules were being flouted

### **CHHATTISGARH**

Friends, the situation in the country is dismal. Broadly the country and its natural resources have been assumed to be for the businesses and political entities as one exploits the resources and the latter enables exploitation by way of unmindful policies. Where would the rest of the people fetch their livelihoods from, what one would do if so close is the proximity of businesses with the politicians, this is a big fundamental question? Reorganisation of erstwhile states of Bihar, Madhya Pradesh and Andhra Pradesh recently is with the motive of creating an atmosphere of ease of exploiting the remaining natural resources as all the three states are rich in mineral resources.

With the changing legal regime, the relevance of local self governance like PESA or Panchayati Raj, aam sabha is being sidelined for accelerating the economic agenda of the government, this has been seen clearly over the last 2 decades and it is even more rapidly spreading now. With

this abrupt scenario in mind a greater integrated collectiveness is the need of the hour and as everyone has seen the election process and how the country is being ruled, we have to enter this arena also (political arena). Many members from the movements, around 25 have been elected in the Panchayat elections in Chhattisgarh's Raigarh region. The relevance is because if this political space is occupied by vested interests, we are told that people do not understand politics and they do not know the reality of development, atleast now we can intervene in the development process. If politicians link themselves in social sector why social workers or activists intervene in politics.

We have formed a farmers company in Gare, Raigarh [Gare Coal and Power Co. Ltd.] which is a producer company and around 350 farmers are involved covering around 400 hectares, there is coal underneath. We want to practice agriculture as we are doing now but if the Government argues that coal is required in the national interest, if so is the case let the farmers provide that service for the nation and not big corporate who work for profiteering from our resources and we lag behind. In our area, several coal blocks have been auctioned, one was auctioned at Rs. 3540/tonne and the other for Rs. 108/tonne; does this justify natural resource accounting – if soil is left as it is now, it can supersede the coal economy. With such a low rate, collusion cannot be ruled out. We have filed a petition in the High Court regarding this.

How to collectively engage smaller groups from within the state and use ICT technology like being done by CGnetSwara for training members and people in different states. 773 hectare land was identified as non-transferable which was illegally done for corporates in collusion with the government, 170A of Land Revenue code where land of a tribal cannot be transferred to a non-tribal, there are thousands of such cases and are being identified. The health situation is too bad, many children are handicapped in the region, where is the health service of the government.

### **ANDHRA PRADESH**

In the districts of East & West Godavari, Vishakhapatnam, Vizianagram mining is ongoing and the system is skewed and favours illegal mining, local are being intimidated and efforts are to mine laterite by unlawful methods which is a warning for environmental damages, already certain forest patches are deteriorating. One of the laterite mine lessee illegally mined laterite and obtained a lease which got canceled under public pressure but again the process to award new lease is underway by the Government. The East Godavari district is Schedule V area but it has not been declared a Scheduled area and people doubt it is to exploit the huge laterite resource which is available in abundance there. This is a good forested area but lack of awareness on issue of benefits and loss from mining is not deeply understood, mm&P can do awareness campaigns in the region to make people aware.

### **UTTAR PRADESH**

There are minor minerals in the state like silica sand, sand, stone and these have direct implications on environmental and occupational health of workers. The incidence of silicosis cannot be ruled out in such regions but we have not been able to move forward on this issue, we request for support to understand how the workers can be diagnosed and push the government for compensation to these workers. Yusuf responded that Uttar Pradesh and Madhya Pradesh are similar in many ways and he is also working on the issue of labour and workers so the





challenges in Uttar Pradesh have to be listed by the representatives from the state and then only something can be worked out.

### **Brief Address of Vikas Amte:**

Natural disasters affected many people in different states and displace many and Baba Amte used to call manmade disasters as 'social tsunami'. People here in anandwan are displaced as they didn't find place in society. I'm happy that mm&P conducted this meeting here because our purpose is the same, to work with displaced and affected and find solutions to their worries. Baba Amte's used to call anandwan as a abhyaranya (sanctuary) and not leprosy ashram, in 1939-40 he saw safai kaamgaars doing the menial works of clearing and loading human and other waste on their heads, he then established a union of these safai kaamgaars and Gandhiji called him 'Bhangion ka Badshah' which was the greatest honour. In 1943-44 he established a commune. The one changing moment came when he saw a person lying down in pain and he was shocked to see the situation of this probable leprosy affected person. In 1956 he started a pan India movement by the name of Jodo Bharat, one of the slogan was "Cry Not Friend, Take Steps True to Your Limitless Spirit"

**Milind Pariwakam**, a wildlife biologist from Nagpur shared with the participants the relevance of maps and how technology can help in creating evidence based monitoring and compliance. The relevance was to showcase the aerial view of the forests as it presents a different perspective in terms of assessing the forests and reflects upon observational skills that might not be possible while looking from the ground.

**Abhhir** VP from Amnesty International gave a brief about Amnesty's work in Human Rights activism. They have been working on several issues in several conflict ridden states and one of their team is working on prisoner rights and also working towards human rights defenders. They would like to go to the ground level alongwith their research. They are conducting a workshop in Raigarh in coal mining areas and will reflect upon human rights defenders. They would like to work alongwith mm&P to make their effort reach to the needy persons on the ground.

### **PERMANENT FUND, ILLEGAL MINING**

**Rahul Basu:** Goa foundation began in 1986. In 1989-91, foundation started looking at mining as it was creating lots of problems as many mines are abutting the forests and several have penetrated inside the sanctuaries. We have taken a legal recourse to seek redressal about unsustainable mining that is being carried out by flouting environmental norms and local situations. Goa is a smaller state, almost equal to the size of Delhi and in this small geographical area around 100 mines were operational. Many people know Goa as a tourism destination with beaches and scenic beauty but the state has 60% forests and receive high rainfall which results in topsoil erosion. The Government formed a committee, CEC to look into unregulated mining and in the meantime Shah commission also submitted its report, based on this and ground experiences a PIL was filed in Supreme Court of India. In September 2012 State made the first move to stop mining, then the centre and finally the Supreme Court said all mining should be stopped. We pleaded for relief under Article 21 of the Constitution giving a justification of intergenerational equity, the court asked for more insights about what we clearly wanted to

state, the whole story begins from here. In the process we realized that iron ore is the property of the state which means it belongs to every citizen in the state, not the Government alone, Government is only a custodian. So this becomes a property belonging to everyone and each one is the Uttaradhikari so what share the government should be getting if minerals are to be mined. The whole reasoning about intergenerational equity is that the uttaradhikaris should be getting equitable share i.e. for the future generations. When we looked at what the Government is getting from the mineral resources. So if iron ore is being sold at Rs. 160/tonne and considering the cost of production at Rs. 20/tonne, the value of per tonner of iron is thus Rs. 140/tonne. In eight years, 282 million tonne of iron ore has been sold at 87,748 crore, considering the cost of production at 20% (on the higher side) of the value come out to nearly Rs. 33,000 Crore so the value is about Rs. 54,000 Crore. The state got the royalty of merely 2387 crore thus incurring a loss of Rs. 51,000 crore. The population in Goa is about 15 lakhs so per person loss is 3.40 lakhs in these eight years and the resource worth 54,000 crores was lost. We said that this resource has been lost, What will the future generations get, something has to be suggested. There is 1300 million tonnes still in ground which amounts to Rs. 17 lakh per person in Goa, we gave example that several countries have created pension funds for such purposes. Either certain percentage of this huge fund, say 3% which comes to about Rs. 50,000 per person should be given to them or some alternate arrangement for restoring the environment. But the thing is this concept has not gone too deep in the understanding and even people think that this is government's resource and whatever comes to it as royalty or other proceeds is its property, so the first thing is to start thinking about it and claim rights over such resources. Nothing like this concept or understanding has been mentioned in MMDR or Coal Bill. The other two things are lease grant-renewal and there are direct issues of compensation and restoration which are loosely connected, similarly when coal resource is being auctioned for a time horizon of 30-50 years, it is too long a time as a company looking for profit has short term horizon and would exploit the resources in a short span.

## **CURRENT LEGAL AND POLICY DEVELOPMENT**

Nishant: A brief perspective on changing legislative environment and policies was given, especially on coal and coal ordinance and MMDR Ordinance 2015. As per April 2013 estimates of Geological Survey of India, the estimated coal resource stood at 298914.06 Mt whereas the proved reserves are of the order of 123181.63 Mt i.e. 41.21% of the estimated reserves. Currently around 480-510 Mt of coal is extracted by Coal India and the Government has announced to double this production by year 2019 i.e. one billion tonnes of coal, which would mean more areas to be opened up for coal mining and increasing production in existing mines. In September 2014, the Supreme Court of India held that all coal block allocations in the country so far were arbitrary and illegal and cancelled all the coal blocks, this was obviously a cause of worry for the Government as majority of the country's energy needs are met by Coal but the Supreme Court said that they are cancelling these blocks for the good so that better processes are followed. The Government latched upon this opportunity and brought the Coal Ordinance in October 2014 and appointed a Nominated Authority (similar to a Land Acquisition officer in a particular district) with immense powers. Around 18 coal mines have been auctioned so far in the states of Chhattisgarh, Madhya Pradesh, Jharkhand and estimated auction proceeds amount to about 1.35 lakh crores which will be disbursed to respective states. But these proceeds are for a period of 30 years when again the mine may be put to auction so extending this 'so called windfall gain' if extended to 30 years is something being misrepresented by the Government. In

the same context, the MMDR bill which remained undecided due to 2014 elections and got lapsed was reintroduced in new form by the new Government in November 2014, here again auctioning of minerals has been proposed. The leases which are currently 30 years are now proposed to be extended to 50 years in order to provide boost to mining industry. A new schedule i.e. Schedule IV to the main MMDR Act 1957 has been introduced regarding 'notified minerals' which are limestone, iron ore, manganese and bauxite and have written a clause that where evidence of mineralization is known, Mining lease can be given through e-auction. As the coal and MMDR ordinance speak loud about increasing the state revenues by means of competitive bidding (auctioning) there is an equally weakened benefit sharing proposed in the ordinance which pegs a limit of 1/3rd of royalty over minerals.

In several countries, there is a mixed system of mineral allocation, i.e. through auction as well as first-in-first-assessed, it is not a choice but requires a mixed system. And experts believe that 'highest bid' wins is not the sole criteria, there has to be a stringent eligibility and quality checks before auctioning like complete information about the locality etc. There is no word about how in transition phase of coal mining the issues of displacement, R&R, compensation would be address, this has given a huge setback to the communities, even there is no address on the environmental quality of these coal blocks. In Liberia, EIA is one of the checks for bid qualifying criteria. Experts also believe that effective design and administration of competitive bidding systems can present enormous challenges in the context of weak institutions?

#### **STATE WISE BROAD PLAN**

- Illegal mining issue will raised by all state
- Like Goa foundation state level states paper will be prepared to engage with Government
- Coal mining belt and 5th scheduled area will be focus of study and capacity building programme
- Legal intervention where necessary at NGT level
- Engaging with parliamentarians for MMDR and Coal bill and new ordinance.
- Co coordinating with other likeminded net works and organization in the context of new ordinance and bill.



## 8. Follow-Up of Thermal Power Plants Occupational Health Case

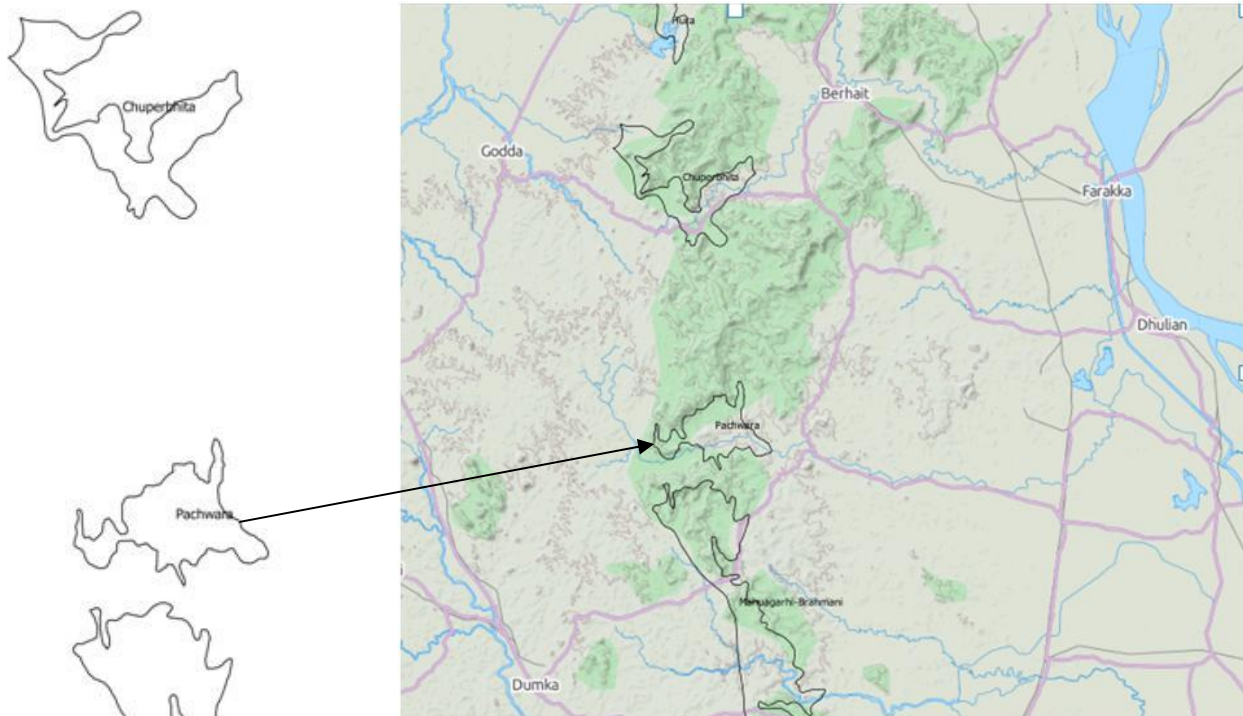
Following the supreme Court order in relation to the Thermal Power Plants in the country, High Courts in all states were directed to initiate proceedings and monitor the status of implementation of the guidelines issued by the Supreme Court. We have been tracking the proceedings in 10 High Courts in the country where the cases are currently ongoing. Case is proceeding on a brisk rate in Gujarat where all TPPs have filed their affidavits regarding the prevailing occupational health and safety conditions in their premises. A preliminary reading of these affidavits show gross negligence and even contradictions within the affidavits itself. A reply to these affidavits is being prepared.

Several workers from different TPPs have also been met to understand the situation on OSH and to also make them aware of the ongoing case in the High Court. Medical camps have also been organised for some of these workers and in the last camp held 14 workers suffering from Occupational lung diseases were identified. A camp to identify Noise related issues is being planned and will be held soon. Many more cases have been diagnosed in other power plants also. The plant managements however denies presence of any occupational disease. Some diagnosed workers have even been thrown out of their jobs after being diagnosed and are fighting for compensation and dismissal in labour courts. Workers in other Power plants are also being contacted to understand their conditions and to receive their feedback and suggestions.

A research on the number of power plants granted clearance by the MoEF is underway. Records indicate more than 200 coal based plants have received clearance from the Ministry. However, there is no mechanism by the ministry to check if the conditions of clearance are being met or not. All compliance reports found so far report no problems or issues. A complete list of all TPPs, both private and public, is being prepared.

Several RTIs have been filed with different monitoring agencies. Some have refused to provide information. However, little information received from factory inspectorates in some states again point to gross negligence by the plant management and non-adherence with the guidelines of the Supreme Court.

## 9. Pachwara Coal Block, District Pakur, Jharkhand | Rajmahal Coalfields



Pachwara South, Central and North coal blocks are part of the Rajmahal coalfields in the mineral rich state of Jharkhand which is a leading state with proved coal reserves.

Pachwara Central is a Schedule II Coal mine now allotted to Punjab State Power Corporation Limited whereas Pachwara North has been allotted to West Bengal Power Development Corporation Limited.

EMTA was the MDO in both the cases but with new allotment, the bidder will have the liberty to choose new mine developer.

The Pachwara coal block was allotted to PSEB (Punjab State Electricity Board) in 2004 but eventually majority of the equity (74%) was allotted to EMTA and a JV was formed in the name of PANEM. Being a schedule V area and posing a requirement of 1272 hectares of land, it drew in a challenge at the beginning itself, the tribal activists intervened and the protest initiated in the region. EMTA has similar arrangements in other states and coal blocks which were allocated to public utilities but were not explored / mined.

The opportunist but weak political structure at the state level moved in and out of the protests and the local activists trying to break the myth of development. In the intervening years the killing (November 2011) of a women activist, Sister John Valsa who was working towards community development in the region again raised apprehensions about corporate governance issues in the extractives sector.

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**User: Punjab Electricity Board (now PSPCL, Punjab State Power Corporation Limited)**

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**JV Partner: EMTA (MDO)**

**JV Name: Panem Coal Mines**

**JV Stake: 74% EMTA and 26% PSPCL**

**Agreement entered in: Year 2002**

**Annual Requirement of PSPCL = 13.6MT**

**Requirement Met from Pachwara as per Environment Clearance = About 7 MT**

**Coal Purchase Agreement: Year 2006**

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After the Supreme Court Judgment (September 2014), all coal blocks were cancelled and auctioning was adopted to award coal blocks / mines to prospective bidders. Also the Supreme Court ordered for recovery of Rs. 295/tonne from prospective bidders of a particular coal block for bidding in the form of levy. In Pachwara's case, the total amount estimated as fine was around Rs. 1505 Crore thereby indicating coal extraction of 51 MT over the years. While applying afresh for Pachwara Coal mines PSPCL has deposited its share of levy amounting to Rs. 391 Crore. In the past, the company has surpassed its limit to extract coal as per Environmental clearance awarded. The following para from CAG report clarifies that.

*7.4.21.21 We noticed from the Raising and Dispatch Register in Mining Office, Pakur that the coal company had produced 82.03 Lakh and 83.08 Lakh MT of coal during 2009-10 and 2010-11 respectively in contravention of the limit fixed by the MoEF, though the production was within the prescribed limits during 2006-07 to 2008-09. Environment Clearance was granted in January 2005 to Pachwara (Central) captive OC coal mining project of M/s Panel Coal Mines Ltd. For annual production of upto 70 lakh metric tonnes (MT) of coal*

A brief comparison of production against allotted extraction

Sl. No.	Year of mining (Financial Year)	Coal to be produced as per approved mining plan (million tonne)	Quantity Produced (million tonne)	Quantity Supplied (million tonne)
1	1st Year (2006-07)	1	1.46	1.46
2	2nd Year (2007-08)	2	3.85	3.85
3	3rd Year (2008-09)	3	6.23	6.23

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<sup>1</sup> Report No. 1 of 2013 Government of Jharkhand - Report of the Comptroller and Auditor General of India on Revenue Sector (Chapter VII, page 112)

4	4th Year (2009-10)	5	8.37	8.53
5	5th Year (2010-11)	6	8.13	8.21
6	6th Year (2011-12)	7	8.46	8.46

The above table indicates poorly managed monitoring system as far as Coal as a resource is concerned and subsequent environmental conditions imposed upon the companies. As the production is illegally increases in violation of the Mining Plan, the consequent result is loss of revenue and investments in environmental management. The mine started producing in Year 2006 but till December 2013 there was no mine closure plan and neither the escrow account. Till September 2014 i.e. the time when the Supreme Court passed its order cancelling the coal blocks, the mine closure plan was still not available and no escrow account opened where the estimated amount to be deposited by JV at Rs. 29.44 Crores.

Report of 2014 (Comptroller and Auditor General of India) clearly indicates the faulty process of contract between JV partners which was advantageous for the EMTA as a MDO whose neighboring operation Bengal EMTA also utilized the infrastructure of Panem Coal (the JV).

Now that the PSPCL has applied for Pachwara Central coal block which has a reserve of 562 MT out of which an estimated 50 MT has already been extracted. The government's renewed approach for auctioning of natural resources has seen a mixed response but the governance issues have to gear up with the increasing conflicts that might crop up due to wide expansion and renewal of mining (after SC Judgment) as 'the liabilities' as per Coal Mines Act and legacy of social debt remain unattended.



## 10. Machhhakata Coal Block, Chhendipada, District Angul | Talcher Coalfields



Demographic Profile of Villages, Census 2011			
Villages	Households	Population	Average Household Size
Similipal	462	2094	4.53
Ghuntulipasi	233	976	4.18
Basantapur	194	742	3.82
Machakkata Jungle	38	177	4.65
Bagadia	1326	5513	4.15
Machakkata	524	2184	4.16
Podapada	430	1841	4.28
Sapoinali	752	2919	3.88
Total	3959	16446	4.15

Machhakata opencast coal mine was envisaged as a joint venture of Mahagenco and GSECL called MahaGuj incorporate in the year 2006 with geological reserves of 1400Mt for supplying extracted coal to power utilities in Gujarat and Maharashtra. This coal block after the Supreme Court's Judgment in September 2014 has been kept under Schedule III mine which is

non-operational and will be allocated for power utilities. Adani group (Adani Enterprises Limited), which is a Gujarat based company was the MDO before the blocks were cancelled. The project awaited environmental and other clearances till August 2014 for want of a public hearing but the objections of people are;

- Since this is a large mine covering an area of about 30 square kilometers, the locals were disturbed due to large swaths of agricultural lands identified under this proposed mine - a large area would be rendered unproductive as currently most of the land under proposed mine is agricultural land barring few other land uses covering 8-9 villages. 39% of land from a single village of Similipal out of nine villages.
- The other concern was large extractable coal area i.e. almost 70% within this coal mine and given the poor record of restoration of mined out areas it left no hesitation among locals that the entire watershed and livelihoods would be affected.
- The third concern was massive displacement of people from villages surrounding and enclosed within this coal mine – the estimated number of affected families is around 1700! Out of these 1700 families more than 1400 face displacement.

See around Angul and one realizes that resettlement and rehabilitation is a far cry and has cemented apprehensions in the minds of people that there is no second chance and why not? These concerns and being witness to the coal region(s), people gathered on the day of Public Hearing and demanded cancellation of Public Hearing – this was happening as the Coal Blocks cancellation was announced by the Supreme Court of India but District Administration still went ahead organizing the public hearing. This was eventually cancelled blaming the local population for bringing the situation to a point that Government had no other chance.

Machhakata Coal Block Allocated in 2006 for Captive mining for their linked power plants at Parli, Bhusawal, Chandrapur & Koradi and Ukai, Wanakbori, Sinor in Gujarat. MahaGuj was incorporated in 2006 (after the coal block allocation, JV of Mahagenco and GEPCL). Maharashtra becomes the majority user if we see the proposed linkages of coal from Machhakata (table below). Many projects are in the process of clearance, like Wankabori in Gujarat which has been awarded Environment Clearance in December 2013 and claims that clearance for Machhakata Coal block is in progress. Looking at the Coal Scam and adhoc processes followed for allocation, pending environment clearance for this coal block cannot become a valid reason to award environment clearance for dependent projects in the State of Maharashtra and Gujarat.

List of Proposed Coal Linkages to Power Plants from Machhakata Coal Block

Project	State	Capacity	EC Date	Coal Req (MTPA)	Remarks
Unit 8 Super Critical TPP at Wanakbori	Kheda District, Gujarat	800 MW	2.12.13	4.17	It has been said in the EC that EC for Coal Block is under process. J-13012/108/2008-IA.II (T)
Bhusawal TPS Unit 6	Maharashtra	660 MW	Enroute PH conducted in 2012	Not mentioned	MahaGuj has vide letter dated 18.5.11 assured supply from Machhakata
Nasik TPS Unit 6	Maharashtra	660 MW	TOR received on 9.6.11	Not mentioned	MahaGuj through Mahanadi Coal blocks
Paras TPP Unit 5	Maharashtra	250 MW	Application to MoEF for issuing TOR on 6.2.2012	Not mentioned	MahaGuj through Mahanadi Coal blocks
Dondaicha TPS Unit 1 & 5	Maharashtra	5X660MW	TOR received on 5.5.11	Not mentioned	For Unit 1&2, coal will be sourced from Chendipada CB (UCM). For Unit 3,4,5 will source coal from Machhakata CB

SPV of IDCO and Brahmani Railways Limited: Angul-Talcher common rail corridor proposed, land acquisition underway. This transformational phase by enactment of Coal Mines (Special Provisions) Act 2015 has also led to several adjustments in terms of merging few coal blocks for the purpose of allocation of these mines. The Chendipada I&II; Mahanadi and Machhakata were separate unexplored and non operational blocks, now these are being combined and kept in Schedule III of the Coal Act for power utilities, unlikely the MDO will be again a private company or entity to explore and develop the mine. As the High Court of Orissa had stalled the land acquisition proceedings last year for the Machhakata project, land acquisition will still be a vital issue as it involves nine villages with huge area. A close watch over the processes will also help communities to face new challenges as and when the allotment is announced. What would be the stand of judiciary in the changed circumstances?



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