

THE IMPORTANCE OF THE SAMATA JUDGMENT A Weapon of the Weak and the Marginalised

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"Poverty in the land of plenty", wrote Minoos Masani way back in 1953 in his book *Our India*. Masani rightly recognises the paradox of our nation -- the land with abundant natural resources has been the home for the poor and the most deprived. The tribal areas in particular have been victims of this paradox despite the fact that the Constitution laid down various provisions for the betterment of the tribal population. For instance, Article 342, by providing that the President's power to 'notify communities as Scheduled Tribes' (STs), unconditionally recognises the fact that the ST communities are the ones which have suffered the worst dispossession. The STs are guaranteed various forms of reservations by Articles 320, 332 and 334 of the Constitution. Panchayats (Extension to Scheduled Areas) PESA Act, 1996 provides tribal communities powers with regards to natural resource management and self-governance. Yet the widespread non-implementation of these provisions has created stark inequalities leading to poverty and deprivation of India's tribal communities.

Mining and its Adversities

With the advent of liberalisation, the tribal regions witnessed a sudden incursion of macroeconomic forces for the exploitation of its rich natural resources. Dense forests, with their fortune worth of timber, minerals and non-timber resources have been callously, irrationally and negligently extracted, first by the public sector industries and from the eighties onwards, by the private and multinational industries. Of these the mining industry has been the most widespread in its devastation. Mining as the single largest industry has caused severe imbalances in the social, political, cultural and legal status of the tribals. Displacement due to various development projects and non-implementation of reparation and rehabilitation policies has been the major reason for the deprivation of tribal community.

According to a study by IIT Roorkee on displacement due to development projects, around 21.3 million people are displaced by dams (16.4 million), mines (2.55 million), industrial development (1.25 million) and wildlife sanctuaries and national parks (0.6 million). Of these, according to Lok Sabha, 40 per cent of the displaced are the tribals even though they constitute only 8.6 per cent of India's total population. The data on displacement is extremely sketchy and most government statistics is dated.

In India, mining policies and practices are rarely informed by the ideals of sustainable and inclusive development and therefore, it has not gained much policy attention. Mining mostly takes place in remote areas and the people there are less likely to assert their rights politically or legally. There is ample evidence of how large-scale mining operations have rarely informed or consulted the local people when their lands are acquired, their forests decimated and their livelihoods jeopardised.

Take for instance the move by Ministry of Mines, to review the National Mineral Policy of 2008 (order dated 14th August 2017). One look at the composition of the committee will dispel the myth of inclusive growth the government advertises. By excluding any representation of civil society or of those directly affected by mining, further disintegration and marginalisation of the community is inevitable. Illegal mining has also been responsible for loss of land, livelihood and health in most of the tribal inhabited areas.

The number of tribals displaced, as shown in the table below, is frightening-

State/ Year	1951-1995				1947-2000		1947-04	65-95	Total
Type	Andhra Pradesh	Jharkhand	Kerala	Orissa	Assam	Bengal	Gujarat	Goa	
Water	1865471	232968	133846	800000	448812	1723990	2378553	18680	7602320
Industry	539877	87896	222814	158069	57732	403980	140924	3110	1614402
Mines	100541	402882	78	300000	41200	418061	4128	4740	1271630
Power	87387	NA	2556	NA	7400	146300	11344	0	254987
Defence	33512	264353	1800	NA	50420	119009	2471	1255	472820
Environment	135754	509918	14888	107840	265409	784952	26201	300	1845262
Transport	46671	0	151623	NA	168805	1164200	1356076	20190	2907565
Refugees	NA	NA	0	NA	283500	500000	646	Nil	784146
Farms	NA	NA	6161	NA	113889	110000	7142	1745	238937
Hum Res.	NA	NA	14649	NA	90970	220000	16343	8500	350462
Health	NA	NA	NA	NA	23292	84000	NA	1850	109142
Admin	NA	NA	NA	NA	322906	150000	7441	3220	483567
Welfare	37560	0	2472	NA	25253	720000	20470	NA	805755
Tourism	0	0	343	0	0	0	26464	640	27447
Urban	103310	0	1003	NA	1241	400000	85213	1750	592517
Others	265537	50000	0	100000	18045	0	15453	840	449875
Total	3215620	1548017	552233	1465909	1918874	6944492	4098869	66820	19810834

Source: Development-Induced Displacement: The Class and Gender Perspective, Walter Fernandes

Samata Judgment

In the landmark case of Samata vs. State of Andhra Pradesh judgment of 1997, (popularly known as the Samata judgment) the Supreme Court of India delivered an authoritative verdict in favour of the right to livelihood of the tribals inhabiting the scheduled areas of the country. In this case, the judiciary reached its pinnacle in upholding the rights of the tribal community. The Samata judgment is an outcome of sustained people's struggle to safeguard their land, resources and livelihood in tribal belts of Andhra Pradesh. It had ramifications across the country. The petitioning organisation, "Samata" had been working for the rights of the people for several years and had filed the case to overcome the hurdles created by the state to acknowledge and deliver on issues of fundamental human rights.

Background

The agency tracts of Visakhapatnam district in Andhra Pradesh has been home to thousands of tribals belonging to Kondadora, Bagata, Parjah, Khond, Kutia, Valmiki and other communities. The agency areas are also rich in mineral resources such as calcite, bauxite, limestone and mica among others. In the name of development since the 1960's the Andhra Pradesh government gave mining leases to small companies and

individuals. With the liberalisation in the 1990's, the government leased out large mining tracts to big corporate giants such as the Birla Periclase. This violated the Land Transfer Regulation Act which prohibits transfer of land to non-tribals in scheduled areas. Birla Periclase was given 120 acres to mine calcite in an interior tribal village named Nimalapadu. The world famous Borra Caves, known for its centuries old stalactites and stalagmites, were also under threat of destruction as the government planned to give bauxite mining leases above the caves.¹ Owing to such whimsical decisions by the government ignoring the rights and resources of the people, Samata took up the fight for the rights of adivasi communities who would be displaced and affected by private mining companies. A PIL was filed in the High Court of Andhra Pradesh in 1993 on the grounds that the government was also a 'person' and hence does not have the power to grant leases in a scheduled area to non-tribals. After sustained struggle for four years, the Supreme Court in July 1997 delivered the landmark Samata judgment.

What Does the Judgment Say?

The essential theme of Samata judgment is the concept of sustainable development and the protective principle. The Supreme Court in the judgment stated that tribal people can exploit minerals in scheduled areas without disturbing the ecology or the forest lands either individually or through co-operative societies with financial assistance from the state. The court further held that in the absence of the prohibition on the transfer of lands, any licensee or lease must provide certain duties and obligations to the tribal people who are affected by the project. However, the court noted that the transfer of tribal land to state-owned agencies or corporations is excluded from such prohibitions. The court also stated that at least 20 per cent of the profits from any project must be set aside as a permanent fund for the affected tribal people's development needs in addition to any expenditure on reforestation and maintenance of the ecology. The court also directed the Prime Minister to develop a national scheme based on the guidelines laid down in the judgment in relation to tribal lands throughout the country.² The Supreme Court through this judgment opened a new area for judicial intervention, and ensured that the forest communities enjoy the rights and protections assured to them under our Constitution, such as the equality before law, leading to social justice. The honourable judges recognising the plight of the tribals in independent India rightly emphasised on the 'right to development' as declared by United Nations in the 'Right to Development Convention'. The judgment in this regard placed special emphasis on the idea of 'social democracy' -- as defined by Dr. Babasaheb Bhimrao Ambedkar— which recognises liberty, equality and fraternity as the principles of life. Recognising the highest constitutional provision of 'Right to Life' as envisaged in Article 21 of the Indian Constitution, the judgment stated that the tribals also have equal rights to social and economic empowerment. As a part of rights to development, to enjoy full freedom, the lands in the scheduled areas are to be preserved for social economic empowerment of the tribals.

Weapon of the Weak

All across the Vth Schedule states, Samata judgment has become the weapon of the weak. It has been used to deliver judgments in favour of the vulnerable communities. As we celebrate 20 years of the historic judgment, a decision³ by the National Green Tribunal (NGT) further increased its credibility. The NGT in its order dated July 20, 2017 cancelled four environmental clearances granted in December 2008 for Jarilla Blocks- 1,2,3 & 8 for bauxite mining in Chitapalli mandal of Visakhapatnam district. The order also stated that if any party is interested in mining, it has to re-approach the Ministry of Environment and Forests (MoEF) to get the clearance for bauxite mining and also take opinion of the parties involved including Samata. The judgement has played a successful precedent in the Niyamgiri Bauxite mining case. It was in favour of the Dongria Kondhs who inhabit the sacred hills of Niyamgiri.

¹Surviving a Mine Field-An Adivasi Triumph, IV Edition, January 2003, Samata India.

²Samata vs Union of India and others, AIR 1997 SUPREME COURT 3297

³Appeal No. 145 of 2015, the National Green Tribunal.

The Supreme Court has strongly authorised the role of the gram sabhas as democratic decision-making forum on issues of individual, community and cultural rights of the tribals and the traditional forest dwellers. If we look at the official figures carefully we find virtually no action taken in cases of illegal mining year after year. Of the nearly 400,000 cases of illegal mining between the years 2013-17 in 22 states, FIRS were lodged in 5 percent of the cases and court cases were filed in less than 15 per cent of the cases. So egregious is the mismatch in some states that one can't ignore the complicity of the authorities. In Andhra Pradesh, for instance, of the 36727 cases in the years 2013-17, FIRs were lodged in only three cases and court cases filed in four. In such a context, the Samata judgement holds immense importance.

What Lies Ahead?

Natural resources are the shared inheritance of the community at large. Thus, it becomes the duty of the community to protect the inheritance for future generations. Minerals are the natural resources most easily converted to cash. This drives rent seeking, illegal mining, bending of rules, turning a blind eye to violations, under and over-invoicing and a variety of other malpractices that are widespread. This has been well-documented in a number of states, including, Rajasthan, Karnataka, Goa, Odisha, Jharkhand and Chhattisgarh among others.

In this view it is important for all the citizens of the country to adopt a few principles in order to protect the natural inheritance-

- Natural resources are the commons and the state is the trustee for the people and especially future generations (the public trust doctrine).
- The commons are inherited. We are only custodians. Our duty is to ensure preservation of the principal value. Only then may we enjoy the fruit of the commons (the intergenerational equity principle).
- Any income from the commons must only be shared equally with everyone, as a right of ownership, a commons or citizen's dividend.

There is also a need for a social-environmental agenda which focuses on reassertion of local community rights over the natural resources. As Madhav Gadgil, ecologist and writer, asserts, 'people close to the nature have a genuine stake in maintaining the environment'.

Conclusion

Thus Samata judgment is a landmark decision that has since 1997 helped save the scheduled areas and the tribal people in different states. Though it has been attempted by various states and other government bodies to repeal and amend the judgment, the Supreme Court has proved to be its saviour. The tribals in various scheduled area states have used the judgment in their favour even though many have faced lack of implementation as well. This issue can be addressed by generating awareness amongst the tribal populations about the various protective legislations envisaged in the Constitution through the Samata judgment. This task is being undertaken by Samata -- an NGO that is working across the Schedule-V states.

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