

Coal mining and violations of Human rights in India

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ABSTRACT

India is the world's third-largest provider of coal. Around 80% of India's electricity is powered by coal, most of it mined from central and eastern Indian states. These states are largely forest regions, rich in minerals. They are also home to most of the country's Adivasi communities. As the demand for coal increases across India, mining companies are expanding existing collieries and developing new mines. But all too often the rights of the native Adivasi, who live on the mineral-rich land, are completely ignored in the development of new mines. Entire communities have been evicted from their own land as mining companies ignore any human rights obligations they are by law required to consider in the development of projects; instead, they put business before people. Adivasi communities in these areas complain that they have been routinely shut out from decision-making processes around their traditional lands, rights and resources. Many have had to wait for decades for the compensation and rehabilitation they were promised. The violations of their rights to consultation and consent - around land acquisition, environmental impacts, Indigenous self-governance, and the use of traditional lands - have led to serious impacts on their lives and livelihoods. Tribal community (Adivasi) has been most vulnerable community in India. They are on the breadline of their socio-economic and political rights. Even after centuries, the unchanged condition of Adivasi communities is leading in India. The violation of fundamental human rights and the state brutality has been perpetrated on them, particularly on tribal women. Women have even less space to defend human rights in this context; they confront additional gender-based discrimination and violence. The democratic experiment has not been successful in this respect. Therefore, there is a surge of Tribal movements in the country for their rights. All tribal people of India have a common thing that they all share a history of injustice. Human rights are those minimum rights which are compulsorily obtainable by every individual as a member of human family. The constitution of India also guarantees the equality of rights of every citizen. The present paper explores the large framework of human rights exploitations in coal mining areas and how tribal rights violated in India.

Key Words : Human rights, Rehabilitation, Environmental impacts, Livelihoods, Good governance

INTRODUCTION

Coal is an important part of India's economic growth story. Nearly two-thirds of India's electricity is derived from coal, and the country is the third largest producer and consumer of the mineral in the world. The Indian government now plans to nearly double annual coal production by 2020 to meet growing energy requirements. However, coal mining in India also has a different cost,

borne by the communities affected by these mines, who are rarely meaningfully informed or consulted when their land is acquired, their forests decimated, and their livelihoods jeopardized. The government nationalized the coal industry through the establishment of Coal India Limited (CIL) in 1975 to oversee the entire country's coal mining operations. CIL currently is 80% owned by the government and the remaining 20% is publicly traded. In 1973, the Coal Mines (Nationalization) Act was passed. It consolidated the nationalization of all the mines and determined which companies were eligible to mine coal in India. CIL aims to increase its output to 1 billion tones annually by 2020, primarily by increasing production in existing mines. Nearly 93 per cent of CIL's total production is through surface, or 'open- cast', mines (Mishra and Mishra, 2014).

Coal mines are spread across fifteen states, with Odisha, Chhattisgarh and Jharkhand being the top coal producers. About 70 per cent of India's coal is located in the central and eastern states of Chhattisgarh, Jharkhand and Odisha, where over 26 million members of Adivasi communities live, nearly a quarter of India's Adivasi population (Impulse NGO Network, 2015). Adivasi communities, who traditionally have strong links to land and forests, have suffered disproportionately from development-induced displacement and environmental destruction in India. A raft of domestic laws requires Indian authorities to consult, and in some cases seek the consent of, Adivasi communities before acquiring land or mining (Peoples Democracy, June 7, 2015). International human rights law and standards also guarantee the right of Indigenous peoples to take part in the decisions that affect their lives and territories. However, these requirements are regularly flouted.

Numbers of Coal Plants	116
Coal Reserves	60 Billion MT (4th ranked globally)
Total installed production capacity of operating coal plants	169,000 MW
Annual Coal Production	649 Million Tons (3rd ranked globally)
Annual Coal Consumption	744 Million Tons (3rd ranked globally)
Net imports of Coal	95 Million Tons
Companies that operate coal mines (Partial List)	Coal India Ltd. (State Owned), Neyveli Lignite, Singareni Collieries, Adani Mining, Jindal Steel and Power, Reliance Power, RPG Group, Sasan Power

Source: <http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/Coal-in-India.pdf/2015>

Human rights are the birthrights of every human being and they form an integral part of the socio-cultural fabric of mankind all over the world. But they are vulnerable to abuse and violation. It is the duty of the nations to protect and sustain these rights by constitutional measures. The situation in most of the third-world countries is quite disturbing. The economically weaker segments of population suffer much in their daily lives. This is due to flagrant violation of human rights by many groups. People having an influence and people belonging to Corporate class are the culprits. They indulge in such violations because they are powerful in one way or the other. They have muscle power, money power and support from other powerful sections in the society.

Human rights defined by different scholars, but, the main stress is on the rights of human beings to live the life with dignity. In the Preamble of the Universal Declaration of Human Rights it is said, "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world" (Shivananda, J., 2006). Section 2(d) of the Protection of Human Rights Act, 1993, says "Human rights mean the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the constitution or

embodied in International Covenants Conventions and Treaties to which India is a party” (Kaushal, 2000).

Richard Wassertrom defines, “one ought to be able to claim as entitlements (*i.e.* as Human Rights) those minimal things without which it is impossible to develop one’s capabilities and to have life as human being” (Wassertrom, 1970).

Tiber Macham says, “Human Rights are universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice” (Macham, 1976).

Joel Feinberg defines, “Human Rights as moral rights held equally by all human beings, unconditionally and unalterably. That is for Feinberg Human Rights are moral claims based on primary human needs” (Feinberg, 1973).

Cranston says, “Human Rights by definition is a universal moral right, something which all people, everywhere at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing to every human being simply because one is human” (Cranston, 1973).

D.D. Basu says, “Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration” (Basu, 1994).

David Selby says, “Human Rights pertain to all persons and are possessed by everybody in the world because they are human beings, they are not earned, bought or inherited nor are they created by any contractual undertaking” (Bajpai, 2003).

M.H. Beg defines, “Human rights imply justice, equality and freedom from arbitrary and discriminatory treatment” (Shivananda, 2006).

Apart from the definitions provided by scholars, the Universal Declaration of Human Rights, 1948, refers Human Rights as inalienable rights of all members of the human family. The above definitions generally focus upon the idea that Human Rights apply to all human beings because they are human beings.

The National Human Rights Commission of India (NHRC), established under the Protection of Human Rights Act, 1993, is entrusted with the responsibility of addressing not only the violations relating to civil and political rights but also those pertaining to social, economic and cultural rights. Being a quasi-judicial body, the NHRC is not bound by rigorous court procedures and is placed in a position whereby it can provide quick relief to victims of human rights violations. The human rights primarily were the relationship between the government and the society and were administered by the internal policies of the nation. The issue of human rights violation of weaker sections of society is increasing day by day all over the world keeping their life at stake. In every sphere of life, in country after country, human rights are being violated. Each violation of human rights, wherever it occurs is a great threat to the welfare and dignity of the human civilization. One can say that the status of democracy of a country can be judged by the status of human rights of minorities, particularly the religious minorities and weaker sections of society.

But, today, human rights violation is rampant through the world particularly in developing countries including India, in spite of adopting a number of declarations, conventions and covenants. Human rights violation is a term used, when a government or society or individual violates the rights of its citizens or its members or any human being. Government and officials violate rights of individuals especially refugees, victims of war, and persons under police or army custody. Women are subject to all types of discrimination and abuse. Children are discriminated, sexually abused and physically

assaulted. The rights of Dalits and tribal people are refused. It is alleged that their properties are taken away and their women and girls are raped, assaulted and ill-treated. (Deva, 2012). Despite the constitutional guarantees the human rights in India are violated and sometimes suppressed by the state and police. The Universal Declaration of Human Rights has yet to be realized in real life in India. Exploitation of poor by rich, socio-economic and gender inequalities, acute poverty, violation of rights of the citizens enshrined in the constitution by the state and police, suppression of basic human rights of Dalits, Adivasis, Women, children and the minorities etc. become day to day affairs in Indian Society.

The state especially in developing economies should build up the empowering institutions that can direct their working efforts towards diagnosing the infected areas of the society where the violations are intense or are a future concern. This step being more proactive in the nature provides the policy makers the opportunity to brainstorm all the available options for building up the methodology of empowering institutions. There is a need for the realization of the importance of human rights standards and principles in policy formulation and its implementation. A role for a human rights-based approach in policy making to support and sustain human development is critical. Our state that acts as the custodian of the citizens of India need to create awareness so that the enlightenment in terms of capabilities of individuals and their basic entitlements in terms of economic, social and cultural rights and civil and political rights is felt. State should continuously strive to overcome the artificial dichotomy between the two sets of rights (human rights and business rights) and pointed out the need for appropriate prioritization referring to issues, such as human deprivations, inequality and social exclusion. In the Indian context, several policy gaps and issues identified by the National human rights commission of the India include the directed approach towards the program implementation that could benefit from a rights framework, including those related to employment guarantees in rural areas.

Human Rights Violations By The Coal Industry :

Land Rights :

Large-scale land acquisitions with grossly inadequate compensation for those displaced, or “land grabs”, are widespread across the country, particularly for mining projects. Both companies and governments at the national and state levels have been accused of acquiring land without the free, prior and informed consent of indigenous communities or the meaningful consultation of affected groups.

For example, tribal groups protested at the site of a coal-fired plant being built in Dumka district, Jharkhand, by CESC (part of the RPG Group conglomerate) in 2008 over alleged deprivation of their land. In a public hearing organized by a retired judge of the Delhi High Court villagers presented affidavits and testimonies with evidence that they had been misled into selling their land, that their signatures on some documents related to their land were coerced and that some of these documents even appeared to be forged. As a result, some villagers protested and two were killed in clashes with police. The company insisted that it would use a minimal amount of farmland and blamed local politicians for misleading members of community into opposing the project (The Telegraph (India), Dec. 7, 2008).

According to a report by Down To Earth Reliance Power’s Sasan Coal Power Project in Sasan village, Singrauli district in Madhya Pradesh, built with a loan from the US Import-Export Bank and certified under the United Nations Clean and a local NGO coalition, Vindhya Bachao Movement (Down to Earth (India), Nov. 20, 2013). Responding to these accusations, the company

insisted that it had not displaced farmers. Despite these and related environmental concerns, the Government of India approved the project, granting environmental clearances in 2014.

Development Mechanism, has resulted in “forceful evictions, intimidation by police and administration to accept paltry compensation for their lost land and houses, or else”, with large families resettled into “tiny two room houses” much smaller than their former dwellings, according to a report by Carbon Market Watch. While some of the communities’ members were compensated, many lived in the forest and did not have deeds for their land and therefore did not receive compensation. Some protested the resettlements, but were beaten by local police and arrested. Reliance says the resettlement village is “one of the most robust community development and corporate social responsibility initiatives by a power plant” in India (Carbon Market Watch, June 13, 2014). But the Los Angeles Times, in a report based on dozens of interviews with villagers, found that only a fraction of the 376 small concrete houses it built are occupied, with locals saying the homes are far from jobs and too small for farming. While these and many other cases present a gloomy picture of land acquisition without protection of affected people’s rights, in some cases plant construction has been halted due to difficulties presented in acquiring land, often caused by local opposition, such as the construction of Damodar Valley Corporation’s Thermal Power Plant at Raghunathpur in West Bengal and the Pakri-Barwadih coal plant in Hazaribagh, Jharkhand (Los Angeles Times, Oct. 15, 2015).

Health Impacts :

Health impacts of coal mining are widespread, especially respiratory diseases. For example, people of the villages surrounding the Udipi Power Corporation plant in Karnataka, owned by Adani Power have protested to block further expansion of the plant over ongoing health problems and crop losses attributable to pollution from the plant, and no response from the state government to petitions seeking remedy (Indian Institute of Science, Bangalore, April 2012). Specifically, fly ash spread from uncovered vehicles has resulted in respiratory and other health problems, with a 2012 expert report finding that “all respondents in the core zone complained of serious health problems due to the contaminated air, water and land”, and loss of livelihood for farmers whose crops were damaged by toxic mists from cooling towers, hazardous waste discharges into streams, and other pollution (Indian Institute of Science, Bangalore, April 2012).

A 2013 report for Greenpeace India and two Indian research groups, carried out by a former World Bank official who had overseen the Bank’s work on pollution, attempted to quantify the national health impacts. It found that pollution from coal power plants is causing 80-120,000 premature deaths per year, and as many as 20 million new asthma cases. It concluded that coal-fired energy production, as currently conducted in India, is responsible for “hundreds of thousands of lives lost, and millions of asthma attacks, heart attacks, hospitalizations, lost workdays and associated costs”. It also found “adverse impacts are especially severe for the elderly, children, the poor and the minority groups are likely to be disproportionately exposed to the health risks and costs of fine particle pollution” (Greenpeace India, March 2013).

Labor Issues :

Mine workers are extremely prone to respiratory diseases including tuberculosis and asthma caused by inhaling coal dust for long periods, with companies failing to follow protocols to minimize coal dust, according to recent news reports. Doctors at some mines acknowledge that they lack the equipment and medicines they need to treat workers. Fatal mine collapses and deaths also occur

due to lack of safety protections in the mines and negligence by the owners. A large number of accidents have been reported in Indian coal mines, with CIL alone reporting an average of approximately 55 deaths and 200 serious accidents per year in recent years and trade unionists insisting that many more worker deaths are never recorded (Amnesty International India, 2016).

Child Labor :

Apart from formal, licensed mines operated by large corporations, “rat hole” mines are widespread in India. As the name suggests, these are crudely built, narrow holes, hand-dug from the surface directly to the coal reserve underground. These holes can be as small as two feet in height: workers crawl through them, chipping away coal by hand, day and night. Those operating these mines have found the perfect workers like children. Employment in the mines represents one of the worst forms of child labor. Despite a national ban, children work in rat hole coal mines in the Jaintia Hills of Meghalaya state for 12 hour shifts underground in flip-flops and jeans (AFP, Feb. 21, 2013). A sustained media campaign led the National Green Tribunal to pass a directive in April 2014 completely banning rat hole mining in the state of Meghalaya, but the state is petitioning the national government to permit and recognize informal mining, with improved safety measures (National Green Tribunal, April, 2014).

A study estimated 70,000 children work in these mines, most of whom were illegally trafficked from the neighboring countries of Bangladesh and Nepal. The National Commission for Protection of Child Rights has confirmed these dangerous conditions. A few years ago, local newspapers reported the discovery of skeletons in the mines, believed to be of child workers. No inquiry was conducted. According to a local NGO, children get trapped and die there, but are not recovered due to lack of means. They also are not reported due to their status as illegal migrants (Impulse NGO Network).

Poverty and Livelihoods :

Despite the fact that coal companies have caused significant generation of employment, they have had major, counter vailing detrimental effects on communities which had previously sustained themselves with farming, fishing, hunting and other activities.

The Tata Mundra Plant illustrates these contradictions. The World Bank’s International Finance Corporation, which financed the project, touted it for its support to local communities. However, its effects on the Wagher fishing community in Gujarat contradicts these claims. According to the report of an independent expert team, the affected communities were not adequately consulted, while the Asian Development Bank Compliance Review Panel found that the fisher folk were excluded from the consultation process during important parts of project planning. The operations of the power plant devastated the community’s livelihood, having salinized fertile land and ground water, and caused both decline in the local fish population, and lasting health effects on the community. With the destruction of their fishing livelihood, the community, with the support of local NGOs, filed lawsuits against the company. In response to the complaint, Tata stated that the issues raised by a Muslim minority identified as “a socially and educationally backward caste” by the government, the Wagher community were not specific to the Mundra Project but in fact were issues regarding Gujarat’s coastline. Tata also insisted that it had a healthy working relationship with the community (Asian Development Bank Compliance Review Panel, 9 Mar. 2015).

Chhattisgarh and Jharkhand, the states with the richest minerals in India and contain 40% of the country’s coal reserves, also are two of the country’s five poorest states. In a 2013 mining

disaster at the Kulda opencast coal mine, operated by a CIL subsidiary in the Basundhara-Garjanbahal region in Odisha, 14 local villagers were killed and many were injured (Hindustan Times, Aug. 11, 2013). The accident was a result of the height of the coal dump, which was above the stipulated limits. The victims were not authorized workers but people from a nearby community with very little economic activity; their livelihoods depended on scavenging coal from these mines. Since the mine company did not technically employ any of these villagers, their families were not given any compensation for the deaths. The management claimed that the locals were informed beforehand about the potential threat of venturing in the area but the local people claimed otherwise.

Loss of livelihood as a result of mining, due to deprivation of lands and harm to crops and natural resources without alternate work or means of subsistence, produces a trap of extreme poverty, leaving affected communities with few if any alternatives and leading some to undertake life-threatening activities like illegally scavenging coal (Mishra and Mishra, 2014).

The Impacts of the Coal Industry on India's Adivasis :

The Adivasis, officially referred to as the "Scheduled Tribes", are India's tribal peoples, making up 7.5% of country's population. The highest concentration of Adivasis are in the states of Odisha, Chhattisgarh and Jharkhand, in the heart of India's coal belt, in addition to Madhya Pradesh and seven other states in North-East India. As these coal-bearing areas encompass land and resources that tribal communities have historically relied on for livelihoods and for cultural or sacred associations, the Adivasis, who constitute the poorest stratum of Indian society, have suffered disproportionately from mining projects through disruption of their traditional ways of life and forced displacement (Greenpeace India, Oct. 2012).

For Example, the expansion of open cast coal mining in Jharkhand, posed a major threat to its indigenous populations. People's Democracy reports that the Pachhwara coal mines of Jharkhand's Pakur district have left Adivasi peasants in abject poverty, with few or no jobs created for locals, as these jobs were given to outsiders. During the summer, people would walk for long distances to fetch water, as the level of underground water has dropped, allegedly due to mining activities. Coal dust also overwhelms locals, causing respiratory illnesses such as asthma. Forests and farmland of the Santhali peasants have been severely reduced by coal mining, leaving many with too little income to live on. They have thus been left to scavenge and to sell coal that falls off from trucks plying the roads (Peoples Democracy, June 7, 2015). Adivasi resistance to mining and displacement is widespread, with some examples of success in protecting their communities. In a path-breaking judgment, the Supreme Court of India declared that "there is nothing in the law which declares that all mineral wealth sub-soil rights vest in the State, on the other hand, the ownership of sub-soil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process." And as a result of their protests, the indigenous communities of the Mahan forests in central India no longer face the threat of being evicted to make way for a giant coal mine (Counter currents, Apr. 4, 2014).

Human Rights Defenders at Risk in the Indian Coal States :

Here, I am giving a very sadly and familiar story in the coal mining states of India, where Adivasis, face exploitation and suppression of their basic rights. Soni Sori is a school teacher in Chhattisgarh, south-east India. She was imprisoned for more than three years on false and politically motivated charges by state authorities for her part in exposing human rights abuses committed by state security forces against indigenous people in Chhattisgarh (Amnesty International UK, Aug. 5,

2014). When people like Soni, along with her nephew Lingaram Kodopi both of them challenge abuses, too often the response from the authorities is not to investigate the claims, but to punish the individuals who have dared to raise their voices. Human rights defenders like Soni and Lingaram are vital in helping communities resist human rights abuses. Human rights defenders are ordinary people like Soni is a teacher, Lingaram is a journalist, who stand up for the rights of others against powerful interests. In the coal mining states of India, they can do this by: -

- Raising awareness amongst communities of their rights
- Ensuring communities are given the opportunities to participate in decisions which affect their livelihoods
- Working with local communities to document breaches of human rights with images, testimonies and video evidence
- Mobilizing communities to protect their rights.

Human rights defenders in coal mining states face overwhelming challenges. These include:

- Widespread deliberate misuse of state administrative and legal mechanisms by mining companies
- Threats and harassment from both mining companies and state authorities
- Risk of arbitrary detention and torture by security forces, as Soni experienced.

The work they carry out is at great personal risk. Women in particular have even less space to defend human rights in this context; they confront additional gender based discrimination and violence.

International Laws and Standards :

India is a state party to several International Human Rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on Elimination of Racial Discrimination (CERD), whose treaty monitoring bodies have recognized the rights of Indigenous peoples to land, consultation and free, prior and informed consent in decisions that affect them. The right of Indigenous peoples to lands they traditionally occupy is also recognized in International Labor Organization (ILO) Indigenous and Tribal Populations Convention 107, which India has ratified (ICCPR, 2003; ICESCR, 2003). India also supported the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which obligates states to consult and cooperate in good faith with indigenous peoples to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources (Amnesty International India, 2014). The ICCPR and ICESCR, along with other human rights treaties, also require India to refrain from and prevent forced evictions, defined as “the permanent or temporary removal against their will of individuals, families or communities from the homes or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (ICCPR, 2003; ICESCR, 2003). Forced evictions may only be carried out as a last resort and only after all feasible alternatives to eviction have been explored in genuine consultation with affected people.

Companies such as CIL also have a responsibility to respect human rights in their operations. The UN Guiding Principles on Business and Human Rights require that companies “Do not Harm” or, in other words, take pro-active steps to ensure that they do not cause or contribute to human rights abuses within their global operations and respond to any human rights abuses when they do occur (Amnesty International India, 2016). CIL cannot point to the role of the government to defend the fact that it knowingly benefitted from processes that violated the human rights of thousands of people.

Conclusion :

India faces contradictions between the drive to development and industrialization, and the need to address the severe negative impacts of coal mines. In making major decisions on these questions, vulnerable populations' rights must be put back at the forefront. Given that good laws are often on the books, but enforcement is largely lacking, civil society organizations have been addressing governance gaps, raising communities' awareness, and organizing them to collectively claim their rights. As the Indian government rushes to increase coal production across the country, this article gives the very real human rights impacts of irresponsible mining, and of the pattern of human rights violations that appear to accompany mining by Coal mines. State governments in these states must compensate affected communities for the loss of their assets and for impacts on their lives and livelihoods, undertake comprehensive human rights and environmental impact assessments and ensure that there will be no evictions until genuine consultations have taken place with affected communities and that resettlement and compensation measures have been fully implemented. Adivasi communities in these areas complain that they have been routinely shut out from decision-making processes around their traditional lands, rights and resources. Many have had to wait for decades for the compensation and rehabilitation they were promised. The violations of their rights to consultation and consent around land acquisition, environmental impacts, indigenous self-governance, and the use of traditional lands has led to serious impacts on their lives and livelihoods. Coal mines companies should also conduct a comprehensive review of operations in all its mines across India to identify and assess human rights risks and abuses, and publicly disclose the steps taken identify, assess and mitigate them.

Indian constitution gives its citizens all the basic human rights. It has also provisions to protect the same by democratic means. The architects of our constitution believed that socio-economic growth is possible only if human rights are safeguarded. In spite of all the safeguards, India witness's violations of human rights. As a result, the poor and those belonging to the Adivasi community and low castes suffer much. Individuals should be protected from the violation of human rights. Violation of human rights creates many economic and emotional problems. It affects the nature and welfare of human beings, and creates many disorders. It is possible to imagine the life chances of Adivasi communities improving through the implementation of practical measures along with considering the rights accorded. The constitutional guarantee, which governs and protects the rights and sovereignty of Adivasi communities, need an immediate implementation. Otherwise, this would lead to a disappearance of the various Adivasi communities from the human picture. The Adivasi community's sovereignty is at stake by the intervention of non-tribes in their area. Therefore, there is an immediate need to constitute Tribal autonomy councils so that the Tribal communities themselves can look after the rules, implementation and development of the localities. The government should also take steps to create favorable societal conditions in which individuals may develop their maximum potentiality.

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