RESOURCE FEDERALISM IN INDIA: THE CASE OF MINERALS

By Nafees Kamran
LLM (Environment And Natural Resources Law)
From Teri School Of Advanced Studies.

The commodity markets being on the stage of buoyancy and the liberalization rules which India have adopted after liberalization, privatization and globalization policy is attracting foreign and Indian capital to state of India which indeed is a resource rich. To tackle the financial and development problems states mainly look for resources like minerals, oil, natural gas, hydropower etc. as the source of their key resources and developmental handles. While every state is forcing for greater share and the economic benefits for their proper development. Centre and states are voluntarily engaged in making room for investment opportunities in resource development, but at the same time local people in resource-bearing states are concerned that local environment and the societal responsibility may be overlooked.

It is against the backdrop of the states demanding more “fair” distribution of resource rents, and of the local people demanding a better recognition of rights and compensation for the adverse effects of resource development that undertook an analysis of compensation issues and the way “resource federalism” plays out in India. This paper focuses on mineral resources, drawing from a larger study on “Compensation to Resource Bearing States” done for the Inter-State Council\(^1\), which covered the oil and gas, hydropower and the minerals sectors.

India’s National Environment Policy, 2006, sets forth the Principle of Decentralization, that is, “ceding or transfers of power from a Central authority to state or local authorities, in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues”. It is because of natural resources being spatially located, thus carrying a wider national significance. Gains from their development accrue to a large common market though the process of their development affects local lives and environments. A discussion on resource federalism in India thus needs to focus on the following issues:\(^2\):

How are the powers and functions over resources and resource development assigned among various levels of government?

Do governments at different levels respect the constitutional assignment of powers and functions, or is there an encroachment into each other’s domain?

How does the functioning of the institutions of federalism in the context of resource development balance the government goals of economic efficiency, political participation and protection of rights?\(^3\)

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1 TERI 2007, 2008
How can federalism be strengthened given the developments in the area of natural resource development?

If we could do analysis of resource federalism we mainly will find that there are three perspectives on resource development. It is agency, spatial and temporal. Since resource development could be called on agency perspective because of number of actors being involved in that production and marketing process impacted and charged with the regulation oversight. It is spatially located because of resources location and the places they have. Their exploitation affects local lives and other resources that are found conjointly. For example, a discussion on the development of minerals can’t be independent of surface land under which they exist, forests etc. has to be discussed, rivers and other related thing which get affected and is used respectively in the process. Perspective for long term project, which can be finite even, includes intergenerational issues, while extracting it can even implies that developmental opportunities of tomorrow is gone.

Mining minerals which is all about issue relating to mining and its attendant issues. It includes resources development issues etc. there arises complexity in resource development state because of policy, sharing of costs and benefits from the development of a particular natural resources etc.

Resources have multi functionality and it has multiple dimensions of resource development which create three key policy issues. One, of balancing the interest of people those who are consuming it as well as the more vulnerable people like the local/indigenous people who have less or no information about it. Two, of seeking to understand and include the interests of different stakeholder groups, particularly the marginalized. And three, of addressing the aspirations to modernity of indigenous (tribal) groups (in areas where minerals are found) while providing them with the option of remaining or being able to return to traditional ways of living, given that people have multiple affiliations that are intrinsic to their lives, and that these create contradictions to what they want at different points of times. This, of course, is part of the larger development debate.

The Constitution of India has assigned functions, legislative competence and fiscal powers to both the centre and states with respect to different subjects. Different aspects of natural resources are administered by either the central or a state government depending on where they are in Schedule VII of the Constitution. This aspect can be clarified by a discussion on how mineral resources and land (a key factor in minerals development) are dealt with in the Constitution.

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5 Schedule VII of the Constitution of India, read with Article 246, in its three lists, union, state and concurrent, deals with this assignment. Broadly, List I or the Union list covers subjects that serve at a national level and List II, or the State List comprises those areas which are limited to a state’s jurisdiction, subject to other clauses. With regard to List III, both the Parliament and state legislatures can make laws but in the case of a conflict where there is no scope for a harmonious reading of the provisions, the law made by the parliament prevails. Only the Parliament has the residuary power to make laws on matters which are not included in any of the three lists.
In Indian state, the ownership title of the minerals vests in the federating states. But ownership is subject to the legislative purview of regulation and control of the mining which is time to time to enacted by government. Minerals within the maritime jurisdiction of the country are owned by the central government. The Mines and Mineral Development and Regulation (MMDR) Act confers the right to allow exploitation of minerals by way of granting licenses and leases on the state governments, but in accordance with the MMDR Act and its Rules, as enacted and notified by the central government. With respect to Schedule I minerals, states have little powers except possession, receiving royalty and a few other payments. Neither can they determine the rates of royalty, the most important non-tax revenue from minerals. With respect to minor minerals, the states can make their own rules and regulations, a provision they have taken advantage of.

Taxes on these minerals are the entitlement of the state in which they are located. But at the same time they are not absolute right and subject to limitations being imposed by any law enacted by the parliament. In 1992, when certain West Bengal laws levying cess on coal were challenged, they were held ultra vires by the high court. However, the Supreme Court upheld the legislation on the ground that states were competent to levy cess as long as the cess was on coal-bearing land. It was further held that “So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the central government, it is not unconstitutional”.

In brief we can inference that states own the mineral resources located within their territory at the same time centre has jurisdiction over regulations over the mines and mineral development. At the same time, states are empowered to legislate on regulation and development of mines and mineral development, but subject to the powers of the centre under List I. So, even though states may own mineral resources, legislative control over them effectively lies with the centre.

Then comes the land which is another contentious issue with regard to minerals regulations and development, especially in those areas where there exist tribal populations at the same time we have understood and apply constitutional provisions there. Because constitution of India provides protection to tribal people and their customary resources which, particularly in schedule 5 and 6 they are dealt.

Minor minerals refer to building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the central government may, by notification in the official gazette, declare to be a minor mineral. See MMDR Act sec 3 (e).

7 Cess Act 1880, West Bengal Rural Employment and Production Act, 1976, West Bengal Primary Education Act, 1973
8 State of West Bengal vs Kesoram Industries Ltd 1532-1533 of 1993.
9 Scheduled Areas in Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Maharashtra, Orissa, and Rajasthan.
Parliament to prohibit or restrict the transfer of land by or among members of the scheduled tribes, or regulate the allotment of land to members of the scheduled tribes in such area\(^\text{10}\). This power vested in the governor is subject to only the condition that it does not affect the basic structure of the Constitution. Relying on Schedule 5 provisions empowering the governor to restrict or prohibit transfer of land in Scheduled Areas, the Supreme Court in the landmark Samatha judgment ruled that government lands, tribal lands, and forest lands in Scheduled Areas cannot be leased out to non-tribals or to private companies for mining or industrial operations. Though the case was specific to the state of Andhra Pradesh, the court categorically ruled that land in Schedule 5 areas could not be so transferred. It was held that the executive, while exercising the constitutional power to dispose of its property\(^\text{11}\), “should equally be cognizant to the constitutional duty and obligations to protect and empower the tribal. Thus, the Court is required to give effect to the constitutional mandate and legislative policy of total prohibition on the transfer of the land in Scheduled area to non-tribals.”\(^\text{12}\)

Environmental and livelihood protection at the same time is important issue in centre-state relations. Environmental protection has been clearly envisaged by constitution at the same time judiciary giving it more stamps by judicial interpretation. Article 21 has to be respected at the same time articles 249 and 252 of constitution gives parliament to legislate the matters relating to state list. For these purpose we have water act of 1974, promulgated under article 252, as water comes under state subject. Then comes Air act of 1981 and environment protection act 1986 were inserted. Then we have forest conservation act of 1980 for conservation of forests and then national environment policy of 2006 as juridical principle which include polluter pays principle, right to life, intergenerational equity and precautionary principles etc.

Centre may be empowered by the Constitution to take mines and mineral development under its control, there is encroachment on the states’ domain because the MMDR Act does not sufficiently recognize their ownership right which has been to some extent compensated and corrected after the recent amendment of 2015. Despite states being the owners, important matters such as fixing royalties and revision, and approval for Schedule I minerals are all under the centre’s control. The encroachment, or the need to encroach, is to ensure that mineral resources are used in the national interest.

There comes then decentralization through 73\(^{\text{rd}}\) and 74\(^{\text{th}}\) amendment which gave more strength to local level government for effective administration thus doing justice to people at scheduled area, PESA (Panchayat extension to schedule area) has been protagonist in this role. Making the panchayats power stronger and extending its powers to scheduled area where it will be consulting the local indigenous community for any related activity, law to be made etc.

Thus it can be concluded that centre-state relationship can be made more cordial and effective concerning more local level amendment, because the problem can be solved from the grassroots level. The making

\(^{10}\) Para 5 (2) of Schedule V, Constitution of India.

\(^{11}\) Article 298, Constitution of India.

of more laws concerning the right of indigenous people like PESA which is just an example be made. The centre-state relation has their role allocated, but at the same time some miniscule differences and superimposition can make work towards development hampered. Thus proper coordination, cooperation as well as difference to be followed between centre-state relationships for proper distribution and development of resources including achieving allied or ancillary interest.