

India Analyser

ANNUAL REVIEW 2010

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Preface

With the passage of a year mottled with controversies, we enter the new year with mixed feelings- hope, negativity and even downright infuriation. But when we look back at 2010, beyond a few startling events, we are not sure what the main issues that affected India were. 2010 has been called "the year of scams". But are we not being amnesic and remembering only the events of the last 2-3 months when we call it that. Memory of any period, whether it's a year, month or week, is often biased to the events most close to the day of recollection.

India Analyser - Annual Review is an effort to highlight the key issues that concerned the state and society in 2010. The review contains specific chapters on the prominent national issues of 2010 - rise of Maoist violence, enactment of the Nuclear Liability Bill, judgment on the Bhopal gas tragedy, announcement of the annual union Budget, reinstatement of the National Advisory Council, judgment on the Ayodhya land dispute, adoption of a new Rupee symbol, rejection of Vedanta's mining project in Niyamgiri, crisis in the Microfinance industry and the revelations of the Radia tapes. Each of these topics dominated much of the public debate in 2010.

The review is divided into two parts- *Perspectives* and *Analysis*. The entries under *Perspectives* are short (700-900 words) and spirited while those under *Analysis* are longer (1200-1500 words) and more serious. Entries under *Perspectives* discuss a topic from a particular perspective and do not discuss all the major aspects of an issue. The entries under *Analysis* contain a more thorough and complete discussion offering a fuller understanding of the issue. While the

entries under *Perspectives* can be slightly opinionated, those under *Analysis* are more analytical and impersonal.

Most of the entries in the review are based on my writings over the last year which were featured in magazines and websites. These include articles on the Nuclear Liability Bill and National Advisory Council which appeared in *India Together* and *Governance Now* respectively and an award winning blog entry on the Naxal issue in *Legally India*. However, all the writings have been thoroughly edited and in many cases rewritten to an extent that they have only little resemblance with the original writing.

It is impossible for a 30 page annual review to comprehensively analyse all the major public issues of 2010. So only 10 issues that dominated 2010 are included in the review. Five of these entries come under *Perspectives* and the other five under *Analysis*. As much as I tried to be objective in selecting the topics, as it's the effort of a human mind, the subjectivity behind the selection cannot be ignored. Though there is no agenda behind the review other than that of informing and igniting the reader, it would be foolish to imagine that my own personal convictions on various issues did not affect the content of the review.

All the ten topics highlighted in the review deal with matters that pre-eminently affect the India polity and the Indian people at large. The underlying theme behind most entries, especially those under the *Analysis* section, is that of identifying the various governance trends emerging in India. However, many issues that dominated the news in 2010 do not

form part of the review. Some of these issues, and the reasons behind its exclusion, are discussed below.

The most glaring lacuna in the review is that it does not include any of the various scams that happened in 2010. This is not because I think these scams were not relevant or baleful. The main problem was deciding, out of the many scams, which scams had to be included in the review. In fact we could have had an annual review which only discusses each of these scams- Commonwealth Games scam, Adarsh Housing Society scam, 2G Spectrum scam, Sukna land scam, the land scams in Karnataka and the corruption allegations against members of the Judiciary.

The 2G scam was perhaps the one topic that could have been selected for this review as it also had a ramification on the functioning of the Parliament. Though not the highlight, the entry on the Radia tapes in this review incidentally touches on the 2G scam. I could perhaps have included a cynical entry which touches on all the scams but then no issue would have been analysed fully and there is a lot of cynicism anyway. Actually, there is some reason to be cheerful as unlike other times, the pressure from the opposition, media and public has triggered some action against the individuals associated with these scams. In similar vein, the entry on the Bhopal verdict in this review discusses how public pressure influences government behavior.

The enactment of the Right to Education Act was another landmark of 2010 which did not find a place in the review. But the right to education was already interpreted by the Supreme Court in 1993 to be part of the fundamental right to life and in 2002 a constitutional amendment expressly

made it a fundamental right. What the 2010 Act does is make it enforceable. However its a little too early to judge how well it is being enforced. Another highlight of the year was the passing of the Women's Reservation Bill in the Rajya Sabha. But since it was not even introduced in the Lok Sabha, its pretty early to pass a judgment on the bill.

Another event which created much media frenzy was the visit of American President Barack Obama. But Obama's visit could not be singularly featured in the review as 2010 also saw the visit of various other heads of state which had equal strategic importance. The general importance of USA in international relations is the major reason for the extra attention given to the visit of the American President. But apart from a captivating speech in the Parliament (and a jig with school kids) there was nothing in Obama's visit that made it distinctive. The highpoint of Obama's visit was his endorsement of a permanent seat for India in the Security Council. However in their visit to India, the heads of all the other countries with a permanent UNSC seat, with the exception of China, also endorsed this. On a related note, the entry on the new Rupee symbol in this review discusses India's global aspirations.

2010 also saw the rolling out of the first few Unique Identification Numbers in the village of Tembhli, Maharashtra. The Nandan Nilkeni headed project has however seen a lot of opposition from many quarters of the civil society. The year also saw the escalation of the crisis in Kashmir with demands for *azadi* becoming more vociferous. The state response to such a demand has been brutal and this has further driven many human rights groups to side with the *azadi* seekers. The reason I have not included either of these unrelated issues in the review is because I have

not been able to reach a conclusive understanding of either of these topics.

The idea to come up with an annual review with the title "India Analyser" is almost a year old. The final product is, unsurprisingly, not everything I imagined it to be when I first conceptualised it. Nevertheless, there is some sort of satisfaction derived out of the completion of a project which I felt at many times was unrealizable. Whether I have done justice to each of the topics is only for the readers to judge. I, by no means, claim expertise on any of the topics discussed in the review. For the entries on the Naxal issue and Vedanta mining crisis, the fact that I had no on-field exposure was surely an impediment. Also for the entries on the Budget and the Microfinance crisis, the fact that I have no formal education in finance might be a downer. If you can overlook the obvious hitches (and errors that might have crept in) and appreciate the review, I would be a pleased man. Happy reading!

Mathew Prasad Idiculla

Perspectives

BHOPAL VERDICT

Exploiting Vox Populi

The Chief Judicial Magistrate of Bhopal on June 7 pronounced the much awaited-delayed-disappointing verdict on the criminal liability of the perpetrators of the Bhopal gas tragedy. For 20,000 lives lost, 7 of the accused were convicted for 2 years while accused No.1 (you know who) still remained an absconder from justice.

“Grave Injustice”, “Justice delayed, also denied”, “Not a verdict, but a mockery” cried the news headlines. Soon activists, local journalists, lawyers and of course our beloved politicians joined the bandwagon in criticizing the decision delivered in a tiny magistrate court somewhere in the middle of India.

Other than the fact that CJM did the maximum he could, it is also important to note some of the positives that emerged as an aftermath to the judgment. For starters, the CJM gave the maximum sentence possible for the offence under section 304A of the IPC. Probably the more fitting provision would have been 304 part II (punishable upto 10 years), however as the Supreme Court in 1996 thought otherwise, there was little the CJM could do. The media, either inadvertently or purposefully (to create

a hysteria after the judgment) failed to highlight this before the judgment was delivered.

More interesting was how the media, civil society and opposition exploited the public opinion against the judgment and thus incidentally ensured that the government behaves more responsibly. The electronic media, driven by TRPs, asked tough questions, brashly took positions and tried to identify the villains of Bhopal. The activists, mostly ignored in the last 25 years, took full advantage of the newfound limelight and voiced their viewpoints. The opposition- left and right- with an interest in maligning the government, highlighted the inaction of the state towards the victims of Bhopal.

The government, clearly at the backfoot, expressed its concern for the victims and in a desperate effort to win back some public support, constituted a Group of Ministers which recommended that the compensation to the victims be increased. A curative petition was filed by the government in the Supreme Court to increase the compensation by 1500 crores. Also another curative petition to increase the charge from 304 to 304A was filed by the government as a result of the perceived injustice.

Even minimal observance would reveal that all the different public agents, even while rightly pointing out issues and taking decisions, were, in some

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way or other, furthering their self-interest. The interest along with being public was also concomitantly private - be it profits, publicity, votes or brownie points. Almost paradoxically the not-so-complimentary interests of the different groups, acted in a manner, fortuitously, for the benefit of the victims of Bhopal and the people of India at large.

The extra compensation, if distributed properly, would be a welcome relief for the victims on whose behalf the government had entered a grossly unjust settlement with Union Carbide decades ago. Of course, it would be the government which will be paying indirectly through the tax payer. But it is the same tax payers money which goes into the various stimulus packages for the corporate sector. Considering this, the extra compensation for the hapless Bhopal victims should not pinch the taxpaying citizen much; though it should have been the private enterprise which should have, in first place, been liable.

Now regarding the larger benefit for the people, all the hype and hoopla surrounding the verdict have oddly brought some form of accountability on the state. The constant pressure coming in from opposition and civil society through the media, forces the state to act in more judicious and just ways. It will not be very easy for any government to get away with anything similar to Bhopal due to this.

The nuclear liability bill hence came under severe criticism and the government even had to drop the idea of introducing an amendment which made the nuclear operator incapable of suing the foreign supplier in case of nuclear accident caused by the latter's fault. The draft bill capped the total liability for any nuclear accident at around 450 million dollars, lower than

the much criticized 470 million dollar settlement for Bhopal made 2 decades ago!

Due to the unrest around Bhopal, a standing committee was constituted to look into the bill and the final bill passed by the parliament did not have the total cap. It also increased the operator liability from 500 to 1500 crores and also made supplier liable for any nuclear accident caused due to its fault. Following the verdict, there has also been the talk from the government of having new laws for industrial disaster, class action litigation and a faster justice delivery mechanism.

All the damage associated with Bhopal were done years back when the compensation was lowly fixed and criminal liability diluted. The events following the recent Bhopal verdict has only demonstrated that public opinion still matters and the high and mighty state can be forced to act more responsibly.

NEW RUPEE SYMBOL

The League of Extraordinary Nations

On the 15th of July India got a unique symbol for its currency. The adoption of a Rupee symbol seems not to be merely for the practical purpose of affixing a symbolic designation for our currency. India joining the elite superpower club of Americans, Europeans, Japanese and Britons as the 5th member with a unique currency symbol might symbolize much more.

Some see it as a symbol of India's arrival as an economic power in the world. Or at least, an attempt to make India's soft power not limited to the mostly mediocre Bollywood movies. Cynics feel it's a window dressing designed by the state to hide all the rot that lies in India. Maybe it's a sign of all the struggles, successes and contradictions that make this nation.

From a design point of view, the symbol seems to be a winner. It looks fine and is easy to use. Perhaps it could have been more beautiful, but then it would have been difficult to inscribe it in our daily use. Hence it wouldn't be wrong to say that the symbol has found the right balance between looks and practicality.

The symbol is more than just a combination of lucidity and charm. It is a combination of the Devangri script Ra and the Roman R. Hence, a sign of the confluence of traditionalism and modernity, of culture and urbanity, of

nationalism and internationalism. In other words, a symbol of what independent India has come to mean. Or so we believe.

The two lines mounted on the top supposedly represents the tricolour with the white portion in the middle standing for the white of the flag. Well, we just have to imagine that the lines are in the hue of saffron and green. An arithmetician would see the lines as the equals to sign, while an egalitarian would see it as a sign of equality.

In a more political and philosophical vein, the adoption of the rupee sign symbolizes the aspiration of a developing nation to challenge the existing world hegemony. It can stand to represent brand India's desire to be recognized by the international community. A desire to alter the balance of power. There is no denying that India is an uninvited entrant into a club that practically dictates how the world is run.

At the same time, India is also aiming for a permanent berth in the other exclusive and more powerful club- the UN Security Council. In their respective visits to India this year, the American, British, Russian and French premiers pledged their support for our bid for a permanent UNSC seat. So after a more symbolic entry into the countries-with-currency-symbols club, the next stop seems to be the more powerful Security Council.

India's election to the Security Council this year by an overwhelming majority perhaps paves way for it playing a larger role in international relations.

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India already has made its presence felt in the G-20 which has with the time become a major *tour de force* in international economic relations.

But can the Rupee symbol emerge to be the sign of the awaiting superpowerdom that the nation believes itself to possess? Or have we got our aspirations wrong? Does the desire to be an economic magnate run contrary to the foundations of this nation?

India's freedom movement represented more than her desire to be an independent nation-state. It was an effort to break away from the burdens of the past, from the clutches of imperialism and for realisation of her many dreams. Freedom hence was a means to an end, the end being raising the nation to a level which gives every Indian the opportunity to develop himself to his fullest capacity.

The rise of India should then mean the rise of Indians. If this does not happen, it is no rise at all. While "India" has developed at a fast rate in the recent past, we cannot say that "Indians" have developed in the same manner.

Hence the impending duty of the state and society is to translate India's advancement to mean the advancement of Indians. And if at all there is anything meaningful the Rupee symbol ought to symbolize, it is the reemergence of a nation whose people possess the capacity to lead life in all its fullness.

AYODHYA VERDICT

What Would Gandhi Do?

On Gandhi Jayanti, when people half-expected the country to flare up in communal riots, there was calm all across India. The Allahabad High Court had, just a day earlier, delivered a controversial judgment dealing with the faiths of Hindus and Muslims. That, following the verdict, there was not even a single reported case of communal violence perhaps proves that the Gandhian idea of communal harmony and non-violence has lately found more societal approbation.

During his lifetime, Gandhi had seen many a riot emerge even out of the most trifling reason. Such forms of mob violence heightened during the time of partition. On the midnight hour of independence, while Nehru was delivering his famous "Tryst with destiny" speech, Gandhi was in Calcutta fasting and praying for the communal tension of partition to calm down. Fatefully, even a few days before his assassination, Gandhi was on a 'fast till death' during yet another communal savage between Hindus and Muslims.

That it was Hindu fundamentalism that led to his death only reiterates how his view of the Indian nation angered a set of people who had a different idea of India. With Gandhi's assassination and Nehru's promotion of a secular India, an idea of India defined on religious terms became less popular and communal clashes also

came down.

What revived the communal spirits was the Babri Masjid demolition whose deadly repercussions were felt even thousands of miles from Ayodhya. The Ram Janmabhoomi movement, the Rath Yatra to Ayodhya and the eventual demolition of Babri Masjid defined how Indian politics was to work in the next two decades. The narrow and bigoted understanding of India which was invoked then still exists but hopefully, as the response to the Ayodhya verdict demonstrated, is not shared by most people of the present society.

We should celebrate the fact that there were no clashes following the judgment, even though the verdict tilted in favour of one side. Yes, the pleas made by the political and religious groups and the security arrangements of the central and state government is also to be lauded. But the fact that there was not even an attempt to disrupt peace also reflects the evolution of our society into one that condemns religious bigotry.

But even while the judgment provided for the maintenance of status quo for 6 months, we immediately heard a call for the building of a "Grand Temple" at the site. The appeal to the "Muslim brothers" was to join hands in building the Hindu shrine and

thus participate in "national integration" for a "new and resurgent India." So despite the calm in the streets across the nation, Mandir politics could very well find its place even in the 21st century political lexicon

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of the country.

The partition formula of the Allahabad High Court does indeed provide a way for the building of both a temple and a mosque side-by-side. Though we cannot always get a conclusive answer to the question, it's tempting to ask during such a time- What Would Gandhi Do? Looking at his life and martyrdom for Hindu-Muslim unity, it wouldn't be far from the truth to conclude that Gandhi would have wanted to see both the Hindu and Muslim sentiments to be represented in the contested land.

Though the 1/3rd formula of the High Court does provide for a reconciled settlement between the groups, we are unlikely to see that happen. Each of the parties have already filed for an appeal in the Supreme Court for obtaining the full property. This is justifiable as there is a preponderance of opinion among the juristic fraternity that the High Court judgment, in an effort to please all parties, was bad in law.

Even now there is a scope for a settlement based on the judgment if someone, whom all groups trust, can appeal to the parties to reconcile the differences. But the sad reality of present day Indian society is that we do not have any person, with the political and societal standing of Gandhi, who can successfully urge the parties to settle the dispute amicably.

Hence, each party will exercise its constitutional right of appeal and it will be the Supreme Court that will have the last word on this. Both Hindu and Muslim groups have stated that they will respect the judgment given by India's highest court. If they do, as they said and did this time, we will once again prove our faith in the public institutions of our democracy. Perhaps

it will also prove that India and its people have evolved; evolved to a level where we no longer need a messiah like figure to guide us.

MICROFINANCE CRISIS

A Macro-Economic Issue

It wasn't very long ago when Vikram Akula of SKS Microfinance was considered as a saviour for India's poverty problem. Akula, who did his PhD on microfinance from Chicago, was in *Time's* 100 most influential people in 2006. But now the image of the company and its founder CEO are in tatters

Today, from a messy child custody litigation to the possibility of facing arrest, Akula's woes seem innumerable. It's not just his wife, but Narayana "mentor" Murthy seems to have also deserted him. Murthy, whose venture capital firm Cataraman had made a 28 crore investment in SKS, asked the SKS management to be more open, honest and fair in its dealings.

The various issues which SKS faces are just an indicator of the larger crisis which microfinance in India is undergoing. From being considered the best device to abolish poverty, Micro-Finance Institutions are now seen to cause farmer suicides. Loan officers of MFIs are now accused of harassing borrowers by threatening them with violence for non-payment of loans.

Andhra Pradesh, which accounts for about 30% of the micro-credit loans in India, saw 54 suicides allegedly caused due to pressure from MFI loans. With two of the biggest microfinance organisations- SKS Microfinance and Spandana Sphoorty Financial- specifically accused for a series of farmer suicides, the crisis surrounding

MFIs has become a socio-political issue.

With the deepening of the crisis, the Andhra Pradesh government on October 15 issued an ordinance to regulate microfinance institutions. By this ordinance, criminal charges could also be leveled against any MFI which use coercive methods for the recovery of loans. Following a complaint of harassment by a borrower, a few recovery agents from SKS and Spandana were arrested by the police. The Andhra Pradesh High Court came to the MFIs' rescue by giving a stay order on the operation of the new ordinance. Many industry experts have remarked that the ordinance over-regulates MFIs to a level which would lead to its bankruptcy.

The crisis surrounding MFIs has brought focus upon an unregulated industry that was until now celebrated for its "social entrepreneurship". However MFIs in India, unlike Bangladesh, are perceived to concentrate more on making the company run more profitably than performing its social obligations. The interest rate of MFIs, that ranges from 24% to 40%, is much higher than other loan arrangements provided by Self-Help Groups supported by government. Unlike MFIs, the repayment period of these loans can be extended with little effect on the interest and there is always the chance of government offering a loan waiver as an election strategy.

What seems worrying is the trend to run MFIs in the traditional profit-centric retail banking model. Among a lot of debate and distrust, SKS

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Microfinance made its Initial Public Offering on the Bombay Stock Exchange in July. After SKS, Spandana had also decided to go public but the IPO is getting delayed due to the current crisis in the industry. Akula and his supporters have claimed that larger funds could enable SKS to reach out to a larger number of poor people. However, others question whether MFIs will be able to fulfill its social mission using the profit-maximizing model of business under the control of the market forces.

The main concern which Grameen Bank founder and Nobel laureate Mohammed Yunus had with the IPO was the that it would be difficult to balance shareholders' interests with that of the people it was originally supposed to serve- the poor. Yunis feared that by going public, MFIs would also start behaving like other private lenders- a loan shark. It seems that his fears have turned into a reality.

The role of Micro-Finance Institutions cannot be ignored more so because it concerns people who live on the fringes of the Indian society. Though over-regulation can have a detrimental effect for all stakeholders, there is a clear need for MFIs to be brought under some form of a regulatory framework. The central government has said that it is preparing a bill to regulate MFIs to ensure that the interest rates are not exorbitant and coercion would not be used for loan recovery. The enactment of a law that supports the independent working of MFIs while ensuring that the perils of unfettered profit-chasing are avoided is perhaps the best way to abate the microfinance crisis.

RADIA TAPES

A Taste of Their Own Medicine

The most striking feature about the controversy surrounding the tapped phone conversations of corporate lobbyist Niira Radia was not that it established the politician-corporate nexus. We have always known of the widespread existence of crony capitalism and the Radia tapes provided further evidence to our convictions. What surprised many was that reputed media persons could have colluded in a corporate agent's efforts in promoting certain MPs as ministers in the UPA cabinet.

Though among other media persons, there were many prominent individuals in the conversations, all the public anger was directed at Barkha Dutt and, to a lesser extent, Vir Sanghvi. The accusations against them have ranged from political lobbying and power broking to conspiring in the 2G spectrum scam.

In the tapped conversations made during the cabinet formation, the journalists were eliciting information from Radia about what portfolios the DMK MPs would get in the UPA government. Radia seemed to be speaking on behalf of the DMK camp and the message which Dutt and Sanghvi were asked to convey to Congress was that the party was speaking to the wrong people in DMK and should speak directly to Karunanidhi. Both promised Radia that they will pass the message but have

now said that they never kept their promise which was, as per them, made merely to get more information from their source.

Even if they did not carry the message to Congress, it does feel inappropriate if not unethical, that a journalist agrees to communicate to a political party what a corporate agent representing another political party wants her to tell. Then there is the question of relying too heavily on information from corporate agents and how this could affect the balance in a news story. Also the proximity of journalists with politicians whereby political journalism has translated to mean "access journalism" is a concern.

However, the biggest issue was that even though the Radia tapes were all over the web after *Open* and *Outlook* published it, most of the mainstream media remained silent on the issue. It was only a week after the controversy broke, with much pressure from social media platforms like Twitter, the newspapers and news channels started

discussing it. Two weeks after the conversations came out, in a special show on NDTV, Barkha Dutt allowed herself to be catechized by 4 senior editors which included her newbie-nemesis- Manu Joseph of *Open*.

Manu Joseph said twice in the show that by failing to report Radia's role as Congress-DMK intermediary, she killed

the "story of the decade". He felt that the "source was the story". But at a time when people were unsure as to who would form government a story with the headline "NDTV source and lobbyist of Tata and Ambani also

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speaking on behalf of DMK" would hardly have mattered let alone be considered the story of the decade.

In any case, is it not a journalistic call whether a story is worthy enough to be reported? And the present case of not making a story out of a source does not *prima facie* appear to be a case of biased reporting or a cover-up of a controversy. A common misconception as to Dutt's culpability is that she failed to report that a PR agent of telecom players like Tata and Ambani was pushing for A Raja as telecom minister. However, from the tapped conversations with Dutt, that Radia was specifically pushing for Raja as telecom minister is not very clear.

It is most unfortunate that this scandal is being called "Barkhagate." This, while doing injustice to the journalist, also trivializes an issue that involves complex questions ranging from privacy laws to telecom policies. By targeting one media person the larger questions on the issues facing journalism under pressure from the corporate and political forces might also be ignored.

But then again, whenever they smell any semblance of a controversy, is it not the media which in first place makes it a "gate." Sensationalizing a controversy, "gating" it and "nixonizing" the individuals associated with the controversy has been our classic media story. And even when the person in question has done nothing illegal or immoral, the media asks- Was it proper/ethical/ideal for the person to have talked to/have links with/have seen together with so and so? If this is the level of scrutiny the media exercises on others, should'nt it adhere to similar standards for itself?

It seems ironical that media's eerie silence on the issue was justified on the

ground that proof of quid pro quo was absent in this case. In case of any controversy, it is the media which works under the non-legal principle- "Guilty until proven innocent". For a change, its media persons who are on the dock and the jury seems to have pre-decided the guilt of the accused before hearing the facts or arguments of the case. Seems the media is getting a taste of its own medicine.

Analysis

ANNUAL BUDGET

The Fiscal Fitness Dash

The budget was highlighted for the reduction in the fiscal deficit and the rise in fuel prices. However, some of the larger policy trends of the government went unnoticed.

On February 26, it did not matter whether one understood economics or not as everyone had an opinion on the union budget that was announced. The sensex rose by 400 points by the time the budget speech ended and corporate India declared it as a good budget. Though Pranoy Roy and his colleagues in the Indian TV media also rated the budget as a good one, the reaction among the people have been mixed.

The main issue bothering the people in general and also the opposition, which staged a never before seen walkout during the budget speech, was the rise in fuel prices. Meanwhile the positives highlighted are the tax concession for people with income between 3 and 5 lakh, the reduction in fiscal deficit to 5.5 per cent and the projected GDP growth of 9 per cent. Reducing the budget to fuel prices, tax concessions, fiscal discipline, projected GDP growth or market performance is a dangerously alluring trend one might fall into. What follows is that some of the larger issues tend to go unnoticed.

The Three Challenges

It is imperative that we understand what the broad areas this budget sought to address. The Finance minister, in his speech, flagged three

challenges that India would have to deal with in the next few years

- To quickly revert to the high GDP growth path of 9 per cent and then find the means to cross the 'double digit growth barrier'.
- To harness economic growth to consolidate the recent gains in making development more inclusive.
- To address the weaknesses in government systems, structures and institutions at different levels of governance.

The three questions raised are very pertinent for India to have a brighter future. In fact, the whole budget speech, except Part B dealing with Tax proposals, spoke on the various ways of meeting these challenges. It is difficult to understand why the Indian media failed to highlight the three issues considering the fact that it was looking for broad policy trends from the government.

Importantly, the finance minister did not present these as the achievements of India or the UPA but as the challenges which we must overcome. Whether the minister has identified the challenges correctly is one issue and whether he has the right plan to meet the challenges is another. And whether India can in the near future successfully meet these challenges is an entirely different matter.

Hardly anyone would say that economic growth is not essential, more so following the economic downturn. A higher GDP growth should generally mean more economic activity, more job opportunity and higher incomes. Also at an international level, the new found importance that India finds itself in is based on our economic growth. But economic growth does not necessarily translate into reduction of poverty or social development. Is the growth triggered by small sections of the society while the majority cripples in deprivation?

This would mean we have to consider the second issue- how to make the growth more inclusive. Different social sector and welfare schemes are suggested for this. There are many flagship programs which the centre runs which seek to further this end. The funds kept aside for this might need to increase but even with increased funds the problem of structural and institutional difficulties in implementation arise.

Hence the third challenge regarding the need for tackling the weaknesses in India's government and institutional systems comes into the picture. Strengthening transparency and public accountability at the different levels of governance can be ways of tackling the implementation issue. So from the global economic crisis one has come to the crisis in governance at home. Though the two may not be easily relatable at the first, as we progress from one to another, one can find the connection.

Beyond Fuel Prices

The most highlighted aspect of the budget was better fiscal discipline from the government, at the cost of higher fuel prices. However, there were many reasons why the government could reduce the fiscal deficit. It did not have any loan waivers or pay arrears to meet this time unlike the previous year. Disinvestment and the one-time sale of 3G to the bidders in telecom spectrum also helped. And finally, there was no extra subsidy on the oil account which also reduced the fiscal deficit but increased, much to the ire (or happiness?) of the opposition parties, the prices of the petrol and diesel.

But more than mere rise in fuel prices, the issue was that the government was moving towards a policy of decontrol of fuel prices. Decontrol of fuel prices was considered a brave decision by many as such a policy has little electoral viability.

The issue surrounding the rise in fuel prices dominated the Parliament in the budget session until the women's reservation bill was tactfully introduced by the government. The opposition, though with political motives, has a point here as

an increase in the fuel prices when the country was going through an all-time high food inflation has a cascading effect. Note that, it is not only the car and bike owners who would be affected. But with a higher prices in diesel, prices of food, essential commodities and other articles might also rise.

But more than mere rise in fuel prices, the issue was that the government was moving towards a policy of decontrol of fuel prices. Decontrol of fuel prices was considered a brave decision by many as such a policy has little electoral viability. Decontrol along with Deregulation and Disinvestment

are the key features of “rolling back the state” which a lot of advocates of the “second-generation reforms” have been yearning for. Decontrol however means the government would have less control of pricing the petroleum products when international rates increase. Hence all through the year, the fuel prices continued to rise in significant numbers. A comprehensive evaluation of the effect of following policies such as decontrol is necessary to shed more light on the issue.

But with all the clamour surrounding fuel prices, some other topics in the budget have been ignored. It is important to question whether government’s single minded aim of reducing the fiscal deficit is hurting the *aam aadmi*. Though the GDP was projected to grow at 9%, the additional provision for rural development just rose by 6.3% and the rise in the allocation for NREGA is only 2.5 %. Meanwhile the rise in defense expenditure is be more than 8%. Hence the question is whether the priorities of the government is in line with that what the majority of the country really need. Also with fuel price decontrol and rising food inflation, people wondered whether the UPA government was merely paying lip-service to its idea of “Inclusive Growth”.

Again, dismissing the government’s intentions might not be a good idea as social sector development constitute 37% of the total expenditure and the new reforms suggested include the decision to increase banking options in rural areas. Perhaps the most prominent social sector announcement of the budget was the introduction of the National Social Security Fund targeted at the unorganized sector, a previously ignored sector where the majority of our workforce are employed.

At the institutional level, an Independent Evaluation Office was decided to be set up to evaluate the impact of the government’s flagship programmes in the social sector. Also a Financial Sector Legislative Reforms Commission was decided to be set up to rewrite and clean up the financial sector laws and a National Mission for Delivery of Justice and Legal Reforms was setup to help reduce the backlog of cases in courts. Though not very substantive, these measures which seek to address the issues in our public institutions cannot be ignored.

Yes, its not the budget that has to deal with the larger issues of governance in India. In fact, it can do very little regarding this. But the very fact that the crisis in governance got some mention in the constricted budget speech makes this issue more important. In recent years there has been a lot of debate on whether good economics amounts to good politics or not. Perhaps its time to stop looking at the budget in a pure economic or political sense but see it also as an instrument that furthers social development and improves institutions of governance.

NATIONAL ADVISORY COUNCIL

The Return of the Queen's Council

The reinstatement of the national advisory council seems to indicate the adoption of an alternative governance structure. But does it go against the fabric of the Constitution?

The National Advisory Council was reconstituted on 29 March after a gap of 4 years. Once again it is Congress President Sonia Gandhi who is its chairperson. After her resignation from the post due to the office of profit controversy in March 2006, the NAC was subsequently dissolved. But with the Supreme Court upholding the validity of the exceptions to certain posts in the office of profit law, the NAC could again be reestablished by the Government.

The National Advisory Council was originally set up by a Government Order in June 2004, to monitor the implementation of UPA's Common Minimum Programme (CMP). The CMP was the basis on which the Left parties had given their support to the UPA which allowed them to form the government in 2004. The functions of the NAC include the formation of policy of the government and assistance in the legislative business of the state.

The NAC would have access to all the cabinet papers and files. It can make recommendations and submissions to the various ministries, but being just an advisory body none of them are bound to pass them. The members to this body are appointed by the Prime Minister in consultation with the chairperson of the NAC. The members, like its last installment, are subject experts and civil society activists including people like M.S. Swaminathan, Jean Dreze, Aruna Roy,

Madhav Gadgil, N.C. Saxena and Harsh Mander among others.

Think tank, super cabinet or unconstitutional

The formation of such a body however, raises a few questions. The preliminary question is whether the NAC can play a positive role in the policy making exercise of the government. Next, the question is whether there is a need for such an advisory body for the Indian state. The most challenging question is whether the formation of such a body goes against the framework of the executive and the legislature laid down in the Constitution of India. The NAC has already been accused by the opposition parties and few others as an unconstitutional body. However, these questions have to be addressed more sagaciously.

For addressing the first question, we need to look at the contribution of the NAC. It is important to note that in its first tenure, some of the most celebrated *aam aadmi* legislations of the first UPA government has been because of the efforts of the NAC. The NAC was instrumental in the enactment of Right to Information Act, National Rural Employment Guarantee Act and Forest Rights Act. These laws have furthered the Inclusive Growth agenda of the UPA.

In its present avatar, though there is no CMP, the special focus of the NAC

is on social policy and the rights of disadvantaged groups. The National Food Security Bill is the perhaps the most awaited legislation which the NAC is working on. Another working group is preparing the much talked about Communal Violence Bill. The NAC is also expected to provide inputs on topics like poverty elimination, health security, land rights and minority welfare. The NAC is also mandated to review the government's flagship schemes and suggest measures to improve its implementation.

Though the Government has ministries which deal with most of the topics which the NAC deal with, it mostly works in a strict bureaucratic framework. Except when certain commissions are setup for specific topics, the government is deprived of experts from the civil society in its policy making. The existence of such a body will crystallize and legitimize some of the demands the civil society has been raising for many years. So it can be argued that, there is a need for the presence of the NAC to fill the void in the present policy think tank of the Government.

However, the worry is whether the NAC would emerge as an alternative cabinet. The NAC does not have any executive powers and can only give refutable advice to the government. However, given Sonia Gandhi's political standing, the other ministries may feel bound to follow the advice given by the NAC. So the allegation is that NAC would emerge as a parallel or a "super cabinet". This would result in the unelected NAC, which is de jure an

advisory body, de facto performing certain executive functions. This would definitely go against the spirit of the Constitution.

Towards an alternative governance system?

The Constitution of India makes the Executive answerable to the Legislature, but the NAC is not answerable to the Executive, Legislature or any other authority. The Constitution does not have any provision which provides for the NAC or a similar body. Nor does it have any provision which prevents the Government from constituting such an advisory body. The allegation is that

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unlike the various advisory commissions which the government forms for particular tasks, the NAC exercises its advisory powers continuously over the government. The recommendations of the other

Commissions are subject specific and often ignored as such bodies disappear as soon as it makes its recommendations.

However the powerful Planning Commission of India, which also exercises its role continuously over many subject matters, is also not a constitutional or statutory authority. The constitutionality of the planning commission is seldom questioned as it's a truism that it essentially performs an important role in planning for the government. The influence of the Planning Commission over the decisions of the government has been very high over the many years. While

the initiatives of the Planning Commission is lately described as “neo-liberal” and “pro-business”, those of the NAC is described as “welfare” and “pro-poor”. So the NAC might bring about a much needed balance in the current policy framework of the Government.

There is little opposition to the idea of institutionalizing expert advice from the civil society through the NAC. The NAC also works as a bridge between the government and the general public apart from doing its primary duty of giving legislative and policy inputs to the government. In fact, the opinion among many people is that the government simply doesn't “perform” due to the unscrupulous politicians which the country has. So the prospect of bringing in experts from the non-political spectrum need not be damaging. However others feel that by instituting the NAC, the UPA government has set a dangerous precedent which future governments may follow. The worry is the kind of “experts” another government may arbitrarily appoint.

Under our parliamentary system, subject experts have little role as the top bureaucrats come through the archaic Indian Administrative Services while all the Ministers have to be members of the Parliament. The government however has the option of appointing an expert as a minister (as Narasimha Rao appointed Manmohan Singh) who then enters the Parliament via the Rajya Sabha route. But the Council of States (Rajya Sabha) was intended to represent the various state interests and not be a means for apolitical experts or powerful businessmen to enter Parliament.

Hence, the larger question is whether there is a need for the Indian polity to evolve into a system which strengthens

the separation of powers (between the executive and legislature) and gives more meaning to executive accountability. Strengthening the Planning Commission and National Advisory Commission, both not being accountable to the Parliament, does not seem to solve the problem. There have been many suggestions, from official and unofficial bodies, for radical changes in the structure of our government. Before all of this, wider debates on the nature of Indian polity and a national consensus on changes in our political system, if any, is necessary.

MAOIST VIOLENCE

Solving the Naxal Puzzle

With tribals caught in between the violence between the naxals and the state, the question is not how naxalism is to be eliminated. The question is how to improve the conditions of people living in these deprived areas.

The reemergence of the Naxalites (rechristened Maoists) after 30 years of near lull has been an issue that has generated a lot of public debate. In the last few years, the Maoists have been engaged in a guerilla war that has challenged the idea of the Indian state both physically and philosophically. The number of deaths associated with Maoist violence was highest this year. Despite getting more than its share of media coverage, it has not been easy to construe the pith and substance of the multi-faceted issue.

The debate surrounding Maoist violence has been extremely polarized. Things didn't help when Home Minister P. Chidambaram took a Bush-like "with us or against us" stance on the issue. While a set of people completely thrash state violence, the others thrash Maoist violence. Paradoxically both groups maintain-we condemn all forms of violence. While state supporters described the Maoists as "bloodthirsty terrorists" and "cowardly killers," the sympathetic descriptions have ranged from "misguided ideologues" to "Gandhians with guns."

Violence begets violence. When the state justifies its action by posing it as a response to Maoist violence, the Maoists turn the table on the state and describe their actions as a natural response to State violence. The reaction of the rebels is further justified on the ground that it has arisen out of dire circumstances-poverty, unemployment, lack of basic services. The state on the other hand

says that it can bring about all this only if the Maoists are eliminated.

In the public sphere, the 'big fight' has been between the stoics and romantics, between the finish them approach and the uplift them approach, between addressing the immediate concern and addressing the root cause, between those who view it as a law and order issue and others who view it as a socio-economic issue.

The Tribal Question

A crucial aspect of the Maoist issue, earlier ignored, is regarding the welfare of tribals who mostly occupy the "Maoist infested" areas and are caught in between the Maoists and the state backed Salwa Judum. The irony is that most of these areas are mineral rich but constitute some of India's poorest districts. Most of the members of the Maoist cadre are from the tribal population and according to an expert committee report of the planning commission, the main support for the Maoists also comes from the adivasis and dalits. The report cites issues such as large scale displacement, forest rights denial and land alienation as the main reasons for the spread of Maoism among these people.

Even while rightly identifying the issues faced by the tribals, the state's "two-pronged strategy" of violent repression with large-scale investment may not work. More investment into these underdeveloped areas should ideally bring in more job opportunities

and hence higher standard of living. However, large investment into several of the private projects in these areas have been flowing in for years. It is exactly this policy of massive development that has resulted in land displacement and related issues.

And it is this vulnerability of the tribals that the Maoists have utilized by fighting their fight and offering an alternative to the oppressive state. However, despite establishing some sort of an alternative governance system in these areas, even the Maoists have not been successful in substantially improving the wages, education or health of the tribals.

Instead the Maoists have used the tribals as foot-soldiers in their fight to capture power from the bourgeois Indian state.

Along with lack of development, the other issue that has been highlighted as a cause for Maoist support is the lack of good governance. The tribals view the government, represented by the politicians, bureaucrats and police, as merely self-serving with no genuine interest in helping the locals. The lack of easy access to justice has also increased Maoist presence and hence allowed alternative and often inhuman forms of justice through its "people's court"

Meeting the Challenges

It is important to understand that the multi-faceted issues facing these areas cannot have simplistic solutions.

Hence expressing that development and good governance should eventuate will not do. More so due to the fact that the common conception of development and good governance may not be in line with the tribals' understanding of the same concepts.

Of late it has come into understanding that as a democratic state, India's approach to fight the rise of Maoist extremism in the tribal areas cannot be limited to police action but must essentially include efforts to make the tribal population also participants in the development. On November 26, the central government announced the Integrated Action Plan (IAP) under

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which it would distribute Rs. 3300 crore for the overall development of 60 backward districts affected by Naxalism. Each of these districts would get 25 crores this year for the creation of basic facilities like schools, health centres and roads.

Also by making the original inhabitants direct stakeholders in various mining projects in these areas, the government can ensure more equitable development in these areas. The draft Mines and Minerals (Development and Regulation) Bill 2010 seeks to provide 26 percent of shares in the mining company to people holding occupational or usufruct or traditional rights on the land over which the lease has been granted. The Bill requires the company to compensate the people by paying them a royalty even in cases where a mine is non-functional or is making loss. Even before providing the mining

lease, the bill requires the state to obtain permissions from those possessing rights over the land. These provisions could mean that the tribal communities would feel less threatened of development projects in their land.

can be an alternative to the alternative that Maoists have established.

On the question of governance, the Panchayat Extension to Scheduled Areas (PESA) Act already empowers the gram sabha in the Scheduled Areas (as per the 5th Schedule of the Constitution) to decide over land use. The Gram Sabhas of these areas are empowered to safeguard and preserve their traditions, customs, cultural identity, community resources and customary mode of conflict resolution. It also ensures that the state has no right to acquire lands or provide mining leases in these scheduled areas without consulting the Gram Sabhas. Self-governance through a powerful autonomous democratic body would mean that decisions affecting the people will be taken by the people itself hence offering a bottom-up rather than top-down approach.

On the larger issue of social justice, first the basic issues of poverty and unemployment have to be met by effective implementation of government schemes like the MGNREGA. To avoid the "people courts", more people centric courts which solves basic problems in a simple manner is necessary. The implementation of the Gram Nyayalaya Act would hence be significant.

Will all problems related with Maoist violence cease with this? Perhaps not. But a sincere attempt to implement these laws could be a starting point. So instead of a government policy of violent repression and massive development, a policy of participatory development, self-governance and social justice, if implemented properly,

NUCLEAR LIABILITY BILL

Mending the Holes

The bill in its original form received a lot of flak for protecting the foreign suppliers. The much stronger bill passed by the parliament protects the victims better but may not attract international investment.

The Civil Liability for Nuclear Damages Bill was the most contentious bills that was passed in the Parliament in 2010. The Nuclear Liability Bill (as it is popularly known) was introduced by the central government with the stated object of fixing nuclear liability arising out of a nuclear accident and for joining an appropriate international liability regime. The bill received a lot of criticism from the opposition parties and civil society on the ground that it was introduced under US pressure. The major concerns regarding the bill were- the rationale behind limiting liability, the extent of nuclear supplier liability and the question of government compensating for the failings of a nuclear enterprise.

On the topic of nuclear liability there are four major international conventions - the 1960 Paris Convention, the 1963 Vienna Convention, 1997 Protocol to Amend Vienna Convention and the 1997 Convention on Supplementary Compensation for Nuclear Damage (CSC). The government has indicated its preference to join CSC which gives supplementary funds. The CSC, which is still not in force, is only available to members of either the Paris or the Vienna conventions and countries that have enacted a domestic law in compliance with the law annexed to the CSC. As India is not party to the Vienna or Paris conventions, it has to get a national law which complies with the provisions of the CSC annex for it to be a party to the CSC.

Though the bill was approved by the Union Cabinet by November 2009, it could only be introduced in the 2010 budget session. Due to an opposition walkout following its introduction, the bill was referred to the Standing Committee on Science and Technology, Environment and Forests. Based on the recommendations of the Standing Committee, the government introduced 18 amendments to the bill. The final bill passed by the Parliament in the monsoon session is a much stronger than the original bill in holding the nuclear operator and supplier liable.

Major issues with the bill

The most contentious feature of the original bill was that it capped the total liability of any nuclear incident at a maximum of 300 million Special Drawing Rights (around Rs.2100 crore at current conversion rate). An absolute cap on liability violates the right to full compensation which, as interpreted by the Supreme Court, is part of the fundamental right to life. An amendment to the bill empowered the central government to take additional measures beyond the capped amount if the amount of compensation exceeds 300 million SDR.

In the original bill, the liability of the operator of a nuclear plant was fixed at Rs.500 crores. It provided that the central government was liable for damages in excess of this amount upto

the set limit of 300 million SDR. An amendment to the bill ensured that operators of nuclear installations producing more than 10 MW of energy is liable upto Rs 1,500 crore. Moreover, the central government may review the amount of operator's liability from time to time and also has the power to increase this amount by notification.

Another major concern with the original bill was that it denied a victim's right to appeal against the decision of the Nuclear Damage Claims Commissioner or a Nuclear Damage Claims Commission whose award "shall be final". However an amendment to the bill has ensured that both the Supreme Court and the High Courts can exercise its writ jurisdiction and powers over tribunals as provided in the Constitution.

Another problematic aspect of the original bill was that it fixed a limitation period of 10 years for filing cases. Damage from radioactive release involves changes in DNA and hence takes a long time to manifest. The short limitation period

would have meant that people who acquire diseases long after the incident will not be allowed to sue. An amendment to the bill ensured that for any personal injury, the time-limit for claiming compensation is 20 years. The final bill, by these amendments, has addressed the most contentious issues regarding the bill i.e. the total liability cap, the operator liability amount, the victim's right of appeal and the short limitation period.

However a few key issues associated with the bill remained unaddressed.

The bill leaves the determination of the occurrence and gravity of a nuclear accident exclusively to the Atomic Energy Regulatory Board (AERB) which is already entrusted with the task of regulation of nuclear plants. The worry is that the AERB may not work as a fully independent body as it was created by a government order and is answerable to the Atomic Energy Commission. Another concern is that as per the bill it will be the government and not nuclear operator that will be liable if the accident has occurred due to a grave natural disaster and in cases of terrorism and other armed conflicts. These exceptions do not feature in the absolute liability rule laid down by the Supreme Court for cases of industries dealing with hazardous substances.

One of the amendments to the bill that went quite unnoticed was the proviso

which allowed the government to assume the full liability of a nuclear installation that it did not operate. The government could by notification assume liability if it is of the opinion that it is necessary in public interest.

The bill upfront provides that that only entities owned or controlled by the government either directly or indirectly or a government company will be allowed to operate nuclear installations. The Atomic Energy Act also prevents private players from operating nuclear plants but does not prevent the operation of a joint venture if the government holds the majority shares. Hence this provision may apply only for joint venture operations. However, the need for such a provision which goes against the spirit of the other provisions of the bill is unclear

especially since the neither the original bill nor the standing committee recommendations provided for it.

The Question of Supplier Liability

Ever since the bill was introduced, the government was accused of protecting the foreign nuclear suppliers. The bill restricts the victim of a nuclear accident from filing cases against the different players in the nuclear industry and channels all the liability to the nuclear operator, which is a state agency. However even the original bill gave the nuclear operator a right to sue the nuclear supplier/builder where it is expressly provided in a written contract or if the nuclear incident was a result of a willful act or gross negligence of the supplier.

The Standing Committee recommended that supplier must be liable for any latent or patent defect in the equipment also. However by recommending the addition of the word "and" instead of "or", in cases of gross negligence or defect, the operator has a right of recourse against the supplier only if there is a written contract to that effect. The amendment introduced by the government did not have "and" hence did not make the contract mandatory. However in the absence of a contract, the right to recourse exists only if the incident occurred as a consequence of an act done by the supplier with the "intent to cause nuclear damage". With widespread opposition to the addition of the term "intent", the government dropped the term and the final bill does not have such a requirement.

However, by increasing the instances where the supplier can be held liable, India may have difficulty in doing international nuclear trade. All the

major international agreements on nuclear liability- including the CSC, Paris and Vienna conventions- provide for a right of recourse against the supplier only if there is a written contract and if the damage results from an act with the intent to cause damage. However our liability law provides that the right of recourse exists when the nuclear incident "resulted as a consequence of an act of suppliers or his employees which includes supply of equipment or material or patent or latent defects or sub standard services" The worry is that such a wide instance of supplier liability may prevent India from becoming a party to any of the international conventions.

Various international nuclear players had expressed its concern with India extending the supplier liability to cases of gross negligence in addition to willful act even in the original bill. The final version of the bill has further extended the scope of supplier liability by providing the operator a right of recourse if the nuclear incident was a consequence of the act of supplier, irrespective of negligence or intention. Hence the worry expressed by some is whether international companies would be willing to do business with India with such stringent provisions. If India can successfully engage in international nuclear trade without diluting the liability law, it would be a real victory.

VEDANTA MINING

The Rise of the Tribes

The Environment Ministry's decision of not allowing Vedanta to carry out its mining project in the Niyamgiri hills is seen as an unprecedented decision favouring the tribal groups who have been carrying on a non-violent protest.

It seems that the tiny tribal groups of Dongria Kondhs and Kutia Kondhs has had a major victory against the might of the British multinational Vedanta. The contentious plan of Vedanta Alumina Ltd. to build a bauxite mine in the Niyamgiri Hills in Orissa was rejected by the union environment ministry on August 24. Union environment minister Jairam Ramesh declined to give the necessary environmental clearance based on a recommendation by a ministry appointed committee which found that the company had violated certain tribal rights.

The fate of the mining project was closely watched as it was seen as a case where industrial development and tribal rights were opposed to each other. The forest covered Niyamgiri hills, over which the proposed mining was to be carried out, provided the livelihood of the Dongaria Kondh and Kutia Kondh tribes who live on the hills and foothills respectively. Their cultural identity was based on the Niyamgiri hills which they consider sacred- the abode of their God, Niyam Raja.

Over the last few of years, these tribes were fighting a Gandhian battle for their land using the new Forest Rights Act. This was at a time when similar projects in tribal populated interior India had seen violent opposition from Maoists using guerilla warfare methods. The campaign against Vedanta's project received international attention with activists in the like of Bianca Jagger also lending

their voice. Survival International ran a campaign by equating the plight of the Kondhs to the Na'avis of the blockbuster movie *Avatar*. Amnesty International had earlier published a report which drew attention to how the Vedanta refinery in the same area had caused environmental damage and affected the sustenance of the tribal inhabitants.

The Battle over Niyamgiri Hills

Since 2004, when Vedanta decided to setup an alumina refinery plant in Lanjigarh near Niyamgiri in Orrisa, the Kondhs have been protesting against the project. Though in September 2005, the Central Empowered Committee (CEC) of the Supreme Court recommended that environment clearance for the refinery be revoked, when the matter came up for hearing, the refinery was already built. The Supreme Court then allowed the operation of the refinery and specified a specific rehabilitation package following which the mining lease over the Niyamgiri hills was also cleared by the Supreme Court.

Following the widespread protests and indictment of violation of environmental laws, a four member committee was constituted by the union environment ministry to investigate whether the mining lease granted to Vedanta was in conformity with the necessary laws. The committee was headed by N.C. Saxena, former bureaucrat and member of the National Advisory Council. The NC

Saxena Committee recommended that the Niyamgiri hills should not be allowed for mining unless, as the law requires, the project is approved by the local tribal communities and village councils whose consent the company had never sought. The committee pointed out that Vedanta had flouted many laws in obtaining the mining lease.

The committee found that Vedanta was in illegal occupation of 26 hectares of village forest land originally possessed by tribals, dalits and other rural poor. It found that the process of recognition of rights under the Forest Rights Act, necessary for the use of forest land for non-forest purpose, had not been completed. It also indicted the Orissa state government for misrepresenting facts to get the project clearance. The committee said that the planned Vedanta project would degrade the Niyamgiri hills and "endanger the Dongria Kondh's self-sufficient forest-based livelihoods, and lead to the extinction of their culture over a period of time." The Committee felt that allowing mining "by depriving two primitive tribal groups of their rights... in order to benefit a private company would shake the faith of the tribals in the law of the land"

On August 26, two days after the mining project was rejected, Rahul Gandhi, general secretary of the Congress party, arrived in Lanjigarh and held a public address near the proposed site. In March 2008, Gandhi had visited Lanjigarh and expressed his solidarity with the Dongria Kondhs

and said that he was personally opposed to mining at the Niyamgiri hills. In his visit this year, Mr. Gandhi said that the cancellation of the project was the victory of the Kondhs who had saved their land, habitat and rights through a peaceful battle. He said that he would continue to fight for the rights and interests of the tribal population as their soldier in Delhi.

The BJD (Biju Janata Dal) ruled Orissa government however felt that the cancellation of lease and Mr. Gandhi's subsequent visit was a political ploy by the Congress which would ultimately deprive the tribal population of the benefits of industrialisation. Also, Jairam Ramesh is perceived to take bold stands when it comes to any potential environmental or livelihood damage that development projects can cause.

A New Sustainable Development Framework

Following Vedanta, the environment ministry's "stop work" notice to Lavasa has also generated a lot of debate. The public gaze is now on the POSCO and Polavaram projects, both of which are also purported to defile environmental and tribal concerns. The fate of POSCO's 12 billion dollar project in Orissa seems ominous as the Forest Advisory Council recently recommended the revocation of the forest clearance of the steel project. The Polavaram dam in Andhra Pradesh was not under much flak from the government until the environment ministry issued a notice on November 2 asking why the state government had

not given a show-cause notice for continuing work on an embankment without getting the necessary environmental clearance.

The issues surrounding the various projects seem to invoke the hoary Environment v. Development debate. Though the present mantra of sustainable development is chanted by everyone, it is the constituents of such development that is in question, especially when the livelihood of the indigenous population is at stake. The idea which most people seem to subscribe to is that development should take place, but not without rehabilitating those affected. A more effective way of addressing the problem could be by ensuring that the affected tribal communities are also stakeholders in the development projects.

The proposed Mines and Minerals (Development and Regulation) Bill seeks to provide 26 percent of share of profit of the mining company to people holding traditional rights on the land over which the lease has been granted. Though there is some opposition to these provisions by the industry, the government seems adamant to pass this law. Various other initiatives which seek to balance the competing interests are underway. The Prime Minister's Office recently asked a group of ministers to prepare a national policy that would spell out areas where mining can be carried out without causing serious environmental damage. As per the directions of the Supreme Court, a Compensatory Afforestation Management and Planning Authority is being created to ensure that if any project diverts forest area for non-forestry purposes, they deposit a sum equivalent to the total value of ecological benefits lost due to the project.

Along with ensuring that forest cover of the country is not lost, the question of tribal identity and time-honoured rights cannot be ignored. The Forest Rights Act enacted in 2006 is essential on this regard. This law empowers the tribal communities living close to the forest to ensure that their habitat is preserved from any form of destructive practices that affect their cultural and ecological heritage. Another legislation gaining prominence is the Panchayat Extension to Scheduled Areas (PESA) Act which empowers the gram sabhas in the tribal centric 5th Schedule areas to preserve their customs and cultural identity and also be consulted before any project is sanctioned. The implementation of such progressive laws has been a major problem because of the operation of the colonial-era Land Acquisition Act which authorizes the state to acquire lands for public purposes.

As a recent study by a government commission pointed out, the Act "is being widely misused on the ground to forcibly acquire individual and community land for private industry." An amendment to the law, which was listed for introduction in the winter session of parliament restricts the state from acquiring more than 30% of the required land for private companies. However, Trinamool Congress chief Mamata Banerjee and many other farmers and rights group have insisted that the state should not forcibly acquire land for private players. The government appears to be in a tricky position- not merely because Trinamool is a valuable ally- for unless it shows some intent in meeting the concerns of the farmers equitably, all of UPA's *aam aadmi* measures under its "inclusive growth" motto will cease to have the same resonance with the masses.

Acknowledgments

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