

Indian Mining Exchange

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Article One

The Environment-Development Debate

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(Excerpts from a clarificatory rejoinder to the 11Th ISRO_JNCASRS Satish Dhawan Memorial Lecture delivered by Shri Jairam Ramesh, former Minister of State for Environment & Forests, Government of India on September 28th, 2010). (http://moef.nic.in/downloads/public-information/Satish_Dhawan-Lecture.pdf)

1. The schism between the need to protect the environment and the need for development essentially arises as a result of the inaccurate definitions that one attributes to the word "development". Those that swear by the existence of such a duality proceed to deal with each one of these terms in a separate compartment, perceive non-existent "tradeoffs" and argue for adjusting one at the expense of the other.

Are "Growth" and "Development" synonymous?

2. The concept of "development" is not easy to define. It is viewed in different ways in different disciplines. What it implies to a local community may be totally different from what it means to an outsider to whom some costs and benefits of the so-called development activity may not be fully visible.
3. However, in most countries including India, as a result of the predominance of pure economic logic in the planning processes, this term has come to imply "economic growth" measured usually by the rate of increase of GDP in real terms. A step up in the rate of economic growth is automatically assumed to yield greater "development". The words "inclusive growth", "gross domestic product", "gross nature product" and "sustainable development" have all evolved over the years as defensive approaches to those who question the validity of the growth-model of the economists.
4. "Inclusive growth" is a cliché used in almost all the documents of the Indian Planning Commission these days to show how anxious the planners are to correct the inequalities in the distribution of wealth, created by the growth-based approach to planning. In reality, a quick glance at the Approach Papers for the recent Five Year Plans will reveal many internal contradictions on the "inclusive nature" of the Plans. A high growth rate of GDP fuelled by large projects causes physical, occupational, social and cultural displacement of millions of

people who cannot voice their concerns due to the non-participative institutions we have. To them, GDP may merely mean "Gross Displacement Product"!

5. The concept of "sustainable development" is inherently a welcome one to describe the kind of development we should strive for. However, one has to develop a time frame over which sustainability should be evaluated. If a forest is cut down to accommodate a project and if it is possible to recreate a compensatory forest within, say, fifteen years, the time frame for evaluating sustainability should extend beyond fifteen years. However, that may not make it sustainable in a different situation in which a precious ground water resource is contaminated by pollutants in an irretrievable manner. The investment needed to clean up the ground water may simply be beyond our reach! Then, how do we define sustainability.
6. The negative impact of environmental degradation and resource depletion is sought to be taken into account by some economists by "adjusting" the rate of savings suitably in the computations that form the basis for GDP estimation. Environmental degradation can have many other adverse impacts on the people. To consider its impact only on the people health or other narrow aspect of public well-being would therefore be somewhat simplistic and misleading.
7. How does one value irreplaceable assets? The value that a local community places on a given natural asset that forms part of its own ecological habitat may differ vastly from the value perceived by an outsider. The value that a shepherd in a rural area places on the pasture land that the nature has provided him and his forefathers for generation may far exceed the compensation that a revenue authority may have determined for it or a more elaborate valuation of it provided by an economist. Whose valuation should we take into account? These concerns cannot be brushed aside easily by "adjusting" the savings figures on the basis of simplistic evaluations.

"What is Development"?

8. There are some important issues that need to be recognized before trying to define "development".
9. In a democratic society like ours, we should recognize that (i) the local communities alone have the preeminent right to the local resources, (ii) it is they that should have the final say in managing those resources and (iii) "development" is what they perceive it to be, because it is the local community that can best judge the costs and benefits of a given economic activity.

10. The local community should have the freedom to discuss and debate the various "development" approaches available to be able to take a considered decision on the choice it should make. Here, it should be a participative process that is fully in line with what our Constitution envisages. In rural areas Part IX of the Constitution has instituted the Panchayats and the Gram Sabhas. Particularly, in the tribal areas notified under the Fifth Schedule we have the Tribal Advisory Councils. In addition, the Panchayat(s) Extension to the Scheduled Areas) Act, 1996 has special relevance to the tribal areas. All these unique institutions need to be fully empowered and brought into the process of choosing the development alternatives. Then alone, we can say with confidence that we are on the right track towards understanding "development" as a process. This is the process that will help the government identify itself with the local communities in the matter of determining what is desirable from their point of view. It is clear that what is imposed from above on a local community can never be described as a "development activity", as is the case now.

11. If one accepts this fundamental approach, one should simultaneously accept the fact that it should be the decision of the local community to exploit a given resource that forms part of the environment that surrounds it. If it is a mineral resource, for example, the community should decide whether to mine it or not and, if it has decided in favor of mining, decide on the manner in which it should be exploited. It is the local community that should decide the structure of the venture through which the mining activity should be undertaken. It is the local community that should decide the structure of the venture through which the mining activity should be undertaken. If the local community needs any external technical assistance, it will negotiate the terms for it. That is where responsible governments will intervene and facilitate a negotiation process that should take place on equitable and fair terms for the community. This approach alone will ensure that the development process starts from the ground level, not imposed from above. Such development alone will become widely acceptable and beneficial to the society at large.

12. There are some limitations to people's participation in decision making on development activities. It is possible that a decision taken by one community may adversely affect the interests of another community. This could happen, for example, when one group, decides to dam a stream to harvest water, affecting the interests of another group situated downstream. In such cases, traditional processes of negotiation are known to work well, yielding outcomes acceptable to both.

"People are the best judges of development":

13. People are the best judges of the kind of development they need. They can perceive the cost and benefits of a given economic activity better than any external observer.

Public Trust Doctrine:

14. Ecology and livelihoods are symbiotically intertwined. They cannot be viewed as two different entities. It is the ecology that supports the livelihoods of small cultivators, fishing

communities, shepherds and so on. Social and cultural customs have evolved over the centuries based on this close relationship. If one were to delink ecology from livelihoods and deal with them separately, neither would survive. A break in that link will destroy the ecology-livelihood system altogether.

15. The Public Trust Doctrine (widely accepted by the courts) rightly defines this relationship. According to this, the government can at best play the role of a trustee in managing such lands on behalf of the people. The government cannot hand over the management of such lands to private individuals or companies as it would then deprive them of their rightful access to such lands. Any project that runs counter to this concept, is evidently unacceptable. It cannot, by any stretch of imagination, be construed as a “development” project.

Compliance with the Statute:

16. The statute is an explicit expression made by the legislature to extend the letter and the spirit of the Constitution to translate into action certain clearly defined objectives. Compliance with the statute is therefore essential to ensure that the Constitutional requirements are fulfilled.
17. The bottom line for evaluating whether an economic activity can be construed as a “development activity” or not is to ascertain whether it fully complies with the statute. Any activity that violates the statute cannot be brought within the ambit of “development”. An authority that has failed in its responsibility to verify statutory compliance cannot take shelter behind the argument that a given project, in its view, does good to the people in a vague way and therefore is a “development” project.
18. There have been instances of the government pronouncing a given policy in line with the Constitutional requirements, failing to issue the necessary laws to enforce it and subsequently arguing that it could not enforce the policy in the absence of the required statutory authority. Clearly this is illogical and unacceptable. For example, the National Environmental Policy requires the Ministry of Environment and Forests (MOEF) to identify and protect the wetlands. MOEF has not so far issued the necessary notifications. It cannot plead its inability to protect the wetlands merely on the grounds that its hands are tied due to the absence of statutory support. This is usually known in Judicial Parlance as the Precautionary Principle that places the burden, in this case, of protecting the wetlands squarely on MOEF itself.
19. Article 48A of the Constitution enjoins upon the Government, particularly MOEF to protect the environment. In a way, this is the primary responsibility of MOEF. Article 21 confers on

the citizen the right to life. MOEF's role is to provide a harmonious integration of both these constitutional requirements. Any "development" activity that hurts the environment or infringes the citizen's fundamental right under Article 21 cannot be construed to imply development in its true sense.

Fait accompli argument:

20. The fait accompli argument is a dangerous approach to clearing projects that have come up in violation of the statute. This argument has been used by many a delinquent project developers to take up construction activity surreptitiously without prior sanctions (where such sanctions are required by the statute) and getting away with the illegality so committed on the ground that any disruption of this illegal activity would impose inordinate financial and time costs which would render the decision impractical. This is the easiest way to give a go by to the statute. While the MoEF might have allowed the power project at Ratnagiri to proceed despite the civil society's objections on the basis of this fait accompli argument, one should look at the real costs of allowing that project to go on, to understand why environment activists had objected to it in the first instance. When laws are blatantly violated and the ecology is disturbed beyond repair, there cannot be easy trade offs. A coastal environment once degraded, or a mangrove plantation removed and the site defiled, or the ground water sources contaminated will spell doom beyond any reparation. It is not easy to attribute financial costs to it.

Compensatory Afforestation:

21. Compensatory afforestation is indeed a laudable way to accommodate projects that result in cutting down trees. However, once a tree is removed, a replanted tree will take one or two decades to grow to that height. There is an environmental cost to it. The cost will be huge when the government takes up a large number of projects at the same time.

22. While forests can be recreated, wetlands cannot be. There is no way to repair a ground water source once it is contaminated. A hill that has disappeared with its greenery due to construction activity and quarrying cannot be brought back. There are obviously limits to compensation. How does one value a water body or a wetland or a hill?

23. During the last several decades, urban growth has made widespread inroads into water bodies and water courses. These urban agglomerations witness flooding of residential areas during the rainy season. Lives are often lost and there are public health hazards.

Can we live without electricity and minerals?

24. Protagonists of mega projects such as large mining and electricity generation projects argue that modern lives depend critically on these essential inputs. They should know that their present way of calculating the value of such minerals and electricity is based on a gross under valuation of the inputs that go into making them. If minerals and electricity were to be

valued in terms of the cost of ecological destruction they cause and the human trauma they inflict, the true marginal "social" cost of either the mineral or a kilo-watt-hour of electricity would be several times higher than what they have assumed. In such a case, necessarily, we need to look at alternate paradigms of lifestyles. A business as usual approach cannot evidently be sustained for long. We need to look at development alternatives that are less resource-intensive. In a way, once we arrive at a rational definition of "development, these more benign alternatives would emerge on their own as a logical corollary.

Small private enterprise vs big business:

25. The ongoing debate on "environment vs development is partly fuelled by big businesses who have ample resources to maintain public relations campaign to obfuscate the real issue of development. The development protagonists close their eyes to the fact that a small cultivator or a traditional fisherman represents as much of private initiative and enterprise if, not more, as a big corporate entity. However, these small private entrepreneurs do not have enough resources to voice their own concerns. It should be remembered that these big businesses driven by short-term profit motives, neither have a stake in the kind of development that we have defined above nor have a stake in the environment that is under threat. The environmental havoc that has been caused by iron ore mining along the Karnataka-AP border is a standing example of this.

Concluding observations:

26. Once we construct our definition of "development" on the basis of the principles set out in the foregoing analysis, development, ecology and livelihoods converge and become mutually reinforcing. There is no need to introduce any schisms in the debate. I hope that the Ministry of Environment & Forests appreciates this line of thinking and rationalizes its own decision making.

Article Two

"If India's forests, mineral-bearing areas, regions of tribal habitation and watersheds are all mapped together, they will overlay one another on almost the same areas."

Ms. Sunita Narain, Director, Centre for Science and Environment, CSE, New Delhi.

Introduction

Minerals like land and water are invaluable treasures of the earth. Without them we cannot think of industrialization and hence the development of our economy. The most important characteristic of minerals which have a bearing on our present and future well being is that they are practically lost once used. They are non-renewable resources. Hence, the need to conserve these resources and to recycle them cannot be over emphasized.

The social and economic development of a nation depends on its capacity to utilise its natural resources, avoiding its wasteful use to the extent possible. Mineral and power resources are

important natural resources which help in the industrial development of a nation and ultimately in improving the standard of living of the people.

<http://www.cseindia.org/node/384>

Mining Overview

Mining is a contentious subject. It generates almost as many viewpoints and positions as the number of its contestants. It is, unarguably, a core industrial sector and crucial for India's economic growth. It is growing at a rapid pace – between 1993 and 2005, the mining sector showed a compound annual growth rate of 10.7 per cent. It is likely to grow at a much faster rate in coming years. Post-liberalisation, mining is being done not only to satisfy India's domestic requirements, but also to meet the growing international demand. China, in particular, has emerged as a major market for Indian minerals.

On the flip side, the sector's ecological and social footprints are gigantic, to say the least. Mining ravages the land almost beyond repair, pollutes air and water, uproots people and communities, and leads to enormous loss of livelihoods. Marginalised and impoverished tribal communities, on whose resource-rich lands the maximum number of minerals are unfortunately found, are the worst hit: dispossessed from their lands and their forests, their survival is put at stake. Discontent is the natural corollary of all this -- communities in mining regions across India are erupting in protest against the depredations of the sector.

Economic gain vs social and environmental loss: these are diametrically opposing aspects. They necessitate a serious rethink of the policies that govern mining in India today. Our own inability to resolve the conflicting challenges that the mining sector is faced with has fuelled the opposition against mining projects. This Dialogue offers a platform for constructive discussions on the various issues and concerns that govern mining; the aim, of course, is to arrive at a consensus on resolving these challenges.

Mining and environment

Mining is a temporary land use and economic activity, but there is nothing temporary or small-scale about its impacts. The sector exercises long-lasting environmental impacts throughout its lifecycle – during prospecting and exploration, while opening and operating the mines, while transporting minerals and ores, during closure of mines, and even after the closure. Unless it is meticulously planned and thoughtfully executed, mining can destroy land and all the resources that it holds, and degrade the quality of life of people who work and live in the area.

A substantial portion of India's mineral wealth is located under the country's forests. Many of these mineral-bearing areas are also the watersheds of our major rivers – especially in the central and eastern parts of the country. What's at stake, therefore, is not just our forests, but also our water sources. There is a dire need, thus, to debate on where we can mine and where we cannot.

The lack of effective regulations compounds the problem. Mining is one of the very few sectors where environmental regulations have not been codified in detail. While India has regulations governing waste management, air and water pollution or mine closure, there is enough ambiguity in each of these to prevent them from having sufficient teeth. Regulations on diversion of forests,

protected areas and ecologically sensitive regions suffer from a similar fate. While mining is making inroads into these areas, forest clearances have been reduced simply to making payments for compensatory afforestation. Environmental impact assessments (EIAs) are nothing but paperwork and a legal necessity. Even the capacity of institutions to implement regulations is suspect: most state pollution control boards do not have sufficient human power and techno-legal capacity to enforce regulations.

In developing countries like India, mining's impact on environment has direct and organic links with people's livelihoods. It is, thus, absolutely imperative to chart a way ahead to address the environmental impacts of mining.

Social and economic impacts

The other key imperative is the impact mining exercises over society and economics. Is mining increasing poverty? Most people in India's mineral-rich states say so, and macro-statistics support this contention. States like Jharkhand, Chhattisgarh and Orissa, having a high level of dependence on mineral resources, exhibit lower per capita incomes, greater poverty, lower growth rates and higher levels of mortality, malnutrition and morbidity. District-level analysis bears out this assertion. The mineral-rich districts of the country are also some of the poorest and most underdeveloped in India. Keonjhar, which produces one-fifth of India's iron ore, is ranked 24th out of the 30 districts of Orissa in the Human Development Index (HDI). Gulbarga, the largest limestone producer in India, is second last in Karnataka in HDI. Koraput, which produces more than 40 per cent of the nation's bauxite, ranks 27th out of Orissa's 30 districts in HDI.

Mining's perpetration of poverty instead of prosperity has a lot to do with the lack of policies and systems for distributing the benefits of mining and the way land acquisition, resettlement and rehabilitation have been managed over the years.

The performance of India's major mineral-bearing states in managing land acquisition and displacement can be summed up in one word: dismal. People deprived of their land 50 years ago due to mining are still waiting for their compensation. Some have been displaced more than once. Existing resettlement and rehabilitation (R&R) policies in the country do not recognise the right of the people to say 'no' to a project. They do not acknowledge the land-for-land principle; nor do they believe in sharing the benefits of a project with the project-affected people. Not only is compensation fixed arbitrarily (under-financing of R&R is a chronic problem), almost no effort is made towards restoration of incomes and income-earning opportunities of the affected people. Numerous case studies suggest that the majorities, who have been displaced, now find themselves worse off.

Globally, it is now recognised that the wealth generated by mining comes at a substantial development cost along with environmental damages and economic exclusion of the marginalised. This has led to a new thinking about ways in which mineral wealth can be converted into sustainable development benefits for local communities. Most of these new approaches are built around a framework in which compensation; benefit-sharing, community development and social and economic reconstruction after mine closure are the key aspects. The assumption is simple: wealth generated by mining is not for companies and governments alone -- places and people affected by mining must share its benefits.

It is important to recognise that if impoverishment is the expected outcome of displacement, people will resist it – and justifiably so. The challenge, therefore, is to ensure ways in which mining can create prosperity and alternative livelihoods.

Article Three

<http://www.business-standard.com/india/news/ga-ravi-rebbapragada-forest-rights-activist/406170/>

Q&A: Ravi Rebbapragada, forest rights activist

'Proposal for 26% share in profits may help'

Sreelatha Menon / New Delhi August 29, 2010, 0:15 IST

Ravi Rebbapragada, a forest rights activist, tells *Sreelatha Menon* the Vedanta logic should be applied to all areas where there is a conflict over land acquisition.

Is the environment ministry's rejection of Vedanta's application for bauxite mining in Niyamagiri a victory for the forest dwellers?

I am thrilled, but I would call it a real victory only when the approach of the NC Saxena committee, which upheld the right of forest dwellers to forests, according to the Forest Rights Act (FRA), is applied to all projects where FRA is being violated.

But even this is being projected as a victory of Rahul Gandhi rather than the rule of law. Does this mean FRA will be implemented only where Rahul Gandhi agrees to take up people's cause?

It is true that our society is still in a rather feudal frame. It is more like an oligarchy rather than a democracy. When Rahul Gandhi first visited Lanjigarh, I asked him if he was moved by the tribal issue in Orissa because it was an opposition-ruled state and insensitive to the tribal issue in Andhra Pradesh as it was ruled by the Congress. I asked him to come to Andhra Pradesh to see the plight of the tribes being displaced by the Polavaram dam. It is our demand that he visit all conflict areas, including Polavaram. We have the largest tribal population in the world. He can't ignore the injustice in Andhra where tribes, who form 90 per cent of the people, are being displaced in 300 villages that will be submerged by the dam.

So, you are admitting that FRA as well as the Samata ruling by the Supreme Court in response to your petition don't work. Only individuals, or rather one individual, do?

Apart from law, there is social justice and common sense. These are missing. In spite of the law, Vedanta and the state government could do so much that was illegal. The Andhra Pradesh government has given affidavits in the Supreme Court in the Polavaram case saying the permission from the gram sabhas has been taken. It is a lie. Gram sabhas have not even been set up.

Would you still consider Vedanta a new beginning on the part of the Centre?

The government seems to be thinking that the development of tribes may remove Naxalism. It is mistaken.

Won't tribal development remove Naxalism?

What do tribes want? They want peace. Naxalism is a political ideology while development is a need of the people and the duty of the government. The government has to deal with Naxalism in a political way, by demonstrating that democracy works. I was asked to leave tribal areas by Naxalites in 1997, soon after the Supreme Court gave the Samata judgement, which said tribal land could not be transferred. I asked them what was my fault. They said I was working with the system and I believed in the Constitution. This judgment would spread the feeling that the system was working.

And if the system works, what will the 'dadas' do? That was their problem. The tribes may ask them that if they can go to the court, where is the need for violence?

How have states managed to transfer tribal land in spite of the Samata ruling?

In Andhra Pradesh, the government has given mining leases to the AP Mineral Development Corporation. In Orissa, the lease is with the Orissa Mining Corporation. They do this in every state. Samata ruling said states can set up projects but a private party can't. So, the state, as a leaseholder, entered into an agreement with Anrak and Jindal South West Ltd in Andhra for bauxite mining, and Vedanta entered into an agreement with the Orissa Mining Corporation, and so on. In the Andhra bauxite project, our MP Kishore Chandra Deo has been arguing against it on our behalf. We have pointed out how the Guden Maripakala, the hills on which the mining is to be done, is a proposed biosphere reserve housing rare animal species like mouse deer and golden gecko and bisons.

Is there something wrong with FRA that the NC Saxena committee had to come to its rescue?

It is the way the states have understood and implemented it. They have looked at it as a patta-distribution exercise. Under FRA, forest rights committees have to be set up at the gram sabha level. In Andhra Pradesh, they have been set up at the panchayat level. They can have a maximum of 15 members, while the panchayats have over 50 gram sabhas. So, how can these be representative?

In Orissa, they have village-level forest rights committees. What went wrong with the gram sabhas in the Posco steel project? You were part of the panel set up by the Ministry of Environment and Forests and the Ministry of Tribal Affairs to advise on the violations of law there.

When it comes to Posco and Polavaram, the states have chosen not to implement FRA as they want land. The law is an obstacle. In bauxite areas in Andhra Pradesh, forest rights committees have not been set up even at the panchayat level. On Posco, the Orissa government claims there are no eligible people, meaning other traditional forest dwellers who are covered by FRA. Our committee found that both other traditional forest dwellers and forest land existed and the former cultivated paan leaves on forest land. Besides, we found that the government had taken forest clearance after the gram sabha's consent in neighbouring villages for a project of Indian Oil. But when it came to Posco, they found these people ineligible. What does that mean?

Is clearance possible now in Posco?

We said FRA is incomplete. If they complete FRA, they may get a clearance.

What if gram sabhas say no? They are not going to say yes. No one will ever agree.

There is a saying that when you go to buy cattle, the seller puts the cow in water and shows you just the horns. Now, industry and the state are showing people only the horns. All information is not there. They are tricking us. The trend of development is very mean and cruel. If you tell the benefit to the people, they will agree. The proposal for a 26 per cent share in profits may help.

How can there be mining or power projects without conflict? If you go to gram sabhas for consent, no one will get an inch of land.

You have to rationalise mining. Don't spread everywhere. Exhaust resources in one place. Go where there are less people.

So, what will all these companies do? Besides, there are people everywhere.

What is driving mining? It is pursuit of profit. If there are people, then include the people. Once miners start paying the environment costs, share profits, the number of players will fall. Profits are coming only from cheap resources. You get nothing for corn, but plenty if you sell corn flakes. So, you make profits from cheap resources. How can profits be infinite when resources are finite? Any development which leaves out people means trouble.
