

Monograph Series - I

MINERAL REVENUE AND COAL ROYALTY

WHERE ORISSA STANDS ?



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CYSD

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Foreword

Revenue generation for the state is becoming a growing concern for the public finance experts and state policy makers. State generates revenue from different tax and non-tax sources. Enhancement in the revenue earnings will certainly enable the state in increasing its expenditures in the needful sectors for the human development.

It is a known fact that Orissa is a mineral rich state and it becomes very important to have an analysis on the prospective of earnings from this source. Looking into this, CYSD initiated an exercise with the help of experts to look into some selected items of Tax and Non-tax revenue sources. The exercise aimed at assessing the state's potential for earning from existing sources of revenues as well as to identify the possible alternative opportunities of resource generation. This monograph on 'Mineral Revenue and Coal Royalty: Where Orissa Stands'? is first in the series. It tries to trace the opportunities through which the state can mobilise additional resources for use in priority areas of development. The analysis we hope that, will create a wider discourse among the Citizens to voice their views for changing policy environment in the state.

This monograph is the result of a high degree of team work. Many people have been generous with their time, talents and expertise in helping us with this exercise. We would like to thank each and everyone for their help and encouragement.

This report is dedicated to the policy makers, intellectuals, legislators and all those who are working hard to improve the revenue status of the state. The findings of this monograph will also be useful for the researchers for further analysis and civil society organizations in exploring alternative revenue generation in Orissa from mineral resources.

Jagadananda

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Orissa : An Overview

Orissa, in Eastern India, has 4.78 percent of country's land area and 3.74 percent of population (2001 Census). It is endowed with 98 percent of country's Chromite, 95 percent of Nickel Ore, 77 percent of Graphite, 50 percent of Bauxite, 32 percent of Mineral Sand, 34 percent of Iron Ore, 29 percent of Manganese Ore, 28 percent of Coal, 25 percent of Fire Clay, 21 percent Vanadiferous Magnetite, 13 percent of China Clay deposit, 8 percent of Forest area of the country, 10 percent of country's Water resources, 450 Kms of coastline. But the state languishes in abysmal poverty and deprivations that no doubt, is a paradox. As per the latest survey and calculation, 47.2 percent of the state's population live below poverty line as against 26 percent of country's population (1999-2000 GoI Estimates). In Goa, Punjab, Himachal Pradesh, Haryana and Kerala, the BPL population is 4.4 percent, 6.2 percent, 7.6 percent, 8.6 percent and 12.7 percent of their respective population. The annual infant mortality rate per 1000 children below one year of age is 83 (2003) which is the highest in the country in comparison to Kerala whose IMR (Infant Mortality Rate) is only 11, one of the lowest in the world. Regarding rural malnutrition of expectant mothers, and children under the age of 14, Orissa regrettably tops the list in the country. 36 percent of the population above the age of six are illiterate, where as it is only 9 percent in Kerala. The SC, ST population constitutes more than 38 percent of the state's population (22.2 percent ST and 16.2 percent SC population, according to 2001 Census) which is the highest among non-special category states. Per capita state domestic products at current prices stand at only Rs 9897 (2001-02), whereas in Goa during the said year, it was Rs 51,076. This testifies sufferings of the people of Orissa and their utter deprivation. To add to it, the state government does not have adequate resources to look after social sectors, like health and education and to invest in developing infrastructure like roads, electricity and irrigation.

As the state of Orissa paints a sorry picture at almost all levels of development, this monograph tries to map out opportunities through which the state can draw additional resources from minerals especially coal for spending in priority areas of development. In this study, an attempt has been made to analyze the status of minerals and mining activities in Orissa and the rate of royalty from major minerals especially coal in the state. It attempts to review the fixation of royalty in the context of National Mineral Policy of Government of India. Besides, it analyses the impact of the Hoda Committee Report on mineral revenue in Orissa. In the last section of this monograph, specific recommendations are suggested for increase in revenue and royalty from minerals in the state.

CHAPTER I

MINERALS IN ORISSA

STATUS

It is a known fact that Orissa is a mineral rich state and it becomes very important at the outset to have a look at the status of various minerals occurring in different parts of the state. While **Table I** stands to testify the total recoverable reserves-proved, probable and possible reserves of various major minerals in Orissa and whole of the country (India), **Table-II** would reveal the production figures both at state (Orissa) and national (India) level and value of minerals as well. These two tables portray the mineral richness of Orissa. While on one hand Orissa enjoys almost monopoly position in chromium i.e. (Chromite), Nickel Ore and Graphite, on the other hand it is comparatively better off in case of Bauxite, Iron ore, Mineral sand, Coal and Fire clay. Value-wise Orissa produces more than twelve percent of value of minerals of the whole country. Reserve wise Orissa possesses 17 percent of country's major mineral reserves excluding oil and natural gas. Production of various minerals such as chromite is being carried out in Jajpur, Dhenkanal and Keonjhar; Bauxite in Koraput and Sundergarh; coal in Angul and Jharsuguda; Dolomite and Limestone in Bargarh, Bolangir, Nuapada, Koraput and Sundergarh; iron ore in Jajpur, Keonjhar, Mayurbhanj and Sundergarh and Manganese ore in Keonjhar, Sundergarh and Rayagada districts.

The geographical area of Orissa is 1, 55,707 sq. km out of which approximately 998.26 sq. km area is covered under 598 nos. of mining lease (ML) as on 1.4.2005, thus indicating that the total mining lease area constitutes about 0.64 percent of the total area of the state. Number of working leases with operating mines is however only 331 nos. covering 725 sq. km, which is only 0.3 percent of the area of the state. Active mining area comprises nearly one third of the surface rights area. This show that only less than 16 percent of already leased out mines are actively operating and there is enormous scope for expanding mining activities in the state.

The quantity of production could not be provided in Table II because the units of measures are not identical for all the products. The unit of 'cubic meter' measures natural gas. Furthermore, some solid minerals like gold, silver, tin etc are measured with kilogram because of their availability in very small quantity, where as other minerals-both metallic and non-metallic are shown in tonnes and thousand tonnes. Since there is no mining activity in Orissa with regard to 'lignite', 'petroleum' and 'natural gas', hence except for coal, production figures of no other fuel mineral has been given in this table.

Table I: Mineral Reserves in India and Orissa

Sl. No	Mineral	Location/Districts	Reserves in India (million tonnes)	Reserves in Orissa (million tonnes)	Percentage to all India reserve
	Bauxite	Koraput, Rayagada, Kalahandi, Bolangir, small deposits in Phulbani, Nuapada and Sundergarh	3075	1733	56.36
	Chromite	Keonjhar, Jajpur and Dhenkanal	186	183	98.39
	Coal	Sambalpur, Jharsuguda and Angul	245692	60987	25.82
	Iron Ore	Sundergarh, Keonjhar, Mayurbhanj and Jajpur	14630	4760	32.53
	Manganese	Sundergarh, Keonjhar and Rayagada	406	116	28.57
	Nickel	Jajpur and Keonjhar	188	174	92.55
	Beach Sand	Ganjam and Puri	366	82	49.73
	China Clay	Mayurbhanj and small deposit in Malkangiri	2353	314	13.34
	Dolomite	Sundergarh and Koraput	7349	883	12.00
	Graphite	Baragarh, Sambalpur, Bolangir, Kalahandi, Phulbani, Rayagada, Nuapada, Boudh, Koraput, Nayagarh and Angul	16	4.6	28.7
	Fire Clay	Cuttack, Sambalpur and Jharsuguda	706	177	25.07
	Limestone	Sundergarh, Bargarh, Koraput and Malkangiri	169941	2224	1.31

Source: Geology and Mineral Resources of Orissa, 2006, Page-452

Above figures are total reserves of respective minerals constituting proved, probable and possible reserves taken together.

Table II: Value of Minerals in Orissa and India for 2003-04

Sl. No.	Value of Minerals	India (Rs. in Cr)	Orissa (Rs. in Cr)	Orissa as % of all India
1.	Value of all minerals excluding Atomic and Minor Minerals but including coal, lignite, petroleum and natural gas	62526	3939	6.3
2.	Value of minerals other than Atomic, Fuel and Minor Minerals	7707	1624	21.07
3.	Coal	2535946	2334.83	9.21
4.	Coal (production) '000 tonnes	361168	60049	16.63

Sources : Monthly Statistics, Mar 2004, Vol.36, No.3 (Indian Bureau of Mines)

EMPLOYMENT

Over the years, the growth of mining activity has been accelerating and production has gone up several folds. Export of minerals has shown an upward trend. Given the market demand, value of minerals is also rising correspondingly. But unfortunately after the liberalization and globalisation of economic activities, the employment in the mining sector is declining year after year.

Table III and the graph attached stand witness to the empirical position. During 1990-91, number of workers directly employed in major mineral activities was 67596. The following year i.e. 1991-92 it increased to 68886, which declined to 49794 during 2004-05.

During the same period the production of all major minerals of Orissa has gone up by more than four times and the value of minerals taken together has increased by nearly ten times.

The irony is that the employment during the period declined by more than twenty-six percent due to mechanisation of mines. Deployment of machine in mining operation is welcome till it helps to increase the employment and productivity of labour in this important primary sector. If the use of machine causes retrenchment of workers or low employment it should be stopped in a populous country like India where hands are waiting for work. The following table (Table No. III) and the graph provide the employment status as against high rise of production and value of minerals.

As minerals are being mined at an accelerated pace; it is having adverse effect on the environment, causing damage to our rich reservoir of flora and fauna. The state and the individual private lease holders should take adequate steps to compensate the damage through afforestation, contribution to peripheral development fund and imposition of stringent environment safeguard norms. With most of the deposits occurring in tribal areas, the accelerated mining activity affects the tribals most in the form of displacement and loss of livelihood.

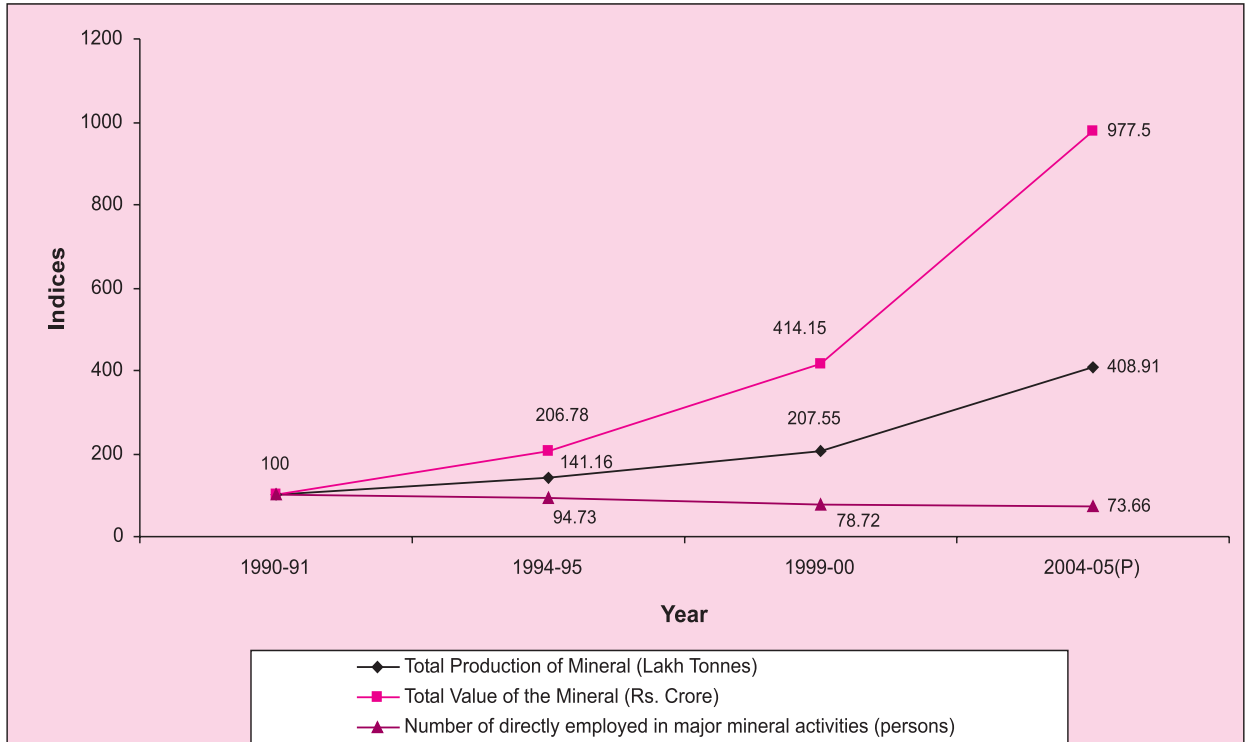
Hence, substantial steps should be taken to create employment opportunity for this deprived section through skill training or provide them a sustainable alternative livelihood in case there is not enough scope to absorb them in mining related work.

Table III: Production, Value of Minerals and Employment in Mineral Activities

Year	Total Production Minerals (lakh tones)	Total Value of the Mineral (Rs. Crore)	Number of directly employed major mineral activities (Persons)
1990-91	310.7(100)	629.01(100)	67596(100)
1991-92	372.0(119.73)	812.39(129.15)	68826(101.91)
1992-93	398.6(128.29)	1033.71(164.34)	66927(99.01)
1993-94	405.8(130.61)	1166.84(185.50)	65951(97.57)
1994-95	438.6(141.16)	1300.70(206.78)	64037(94.73)
1995-96	511.2(164.53)	1634.03(259.78)	65132(96.35)
1996-97	569.10(183.17)	1791.33(284.74)	61192(90.35)
1997-98	628.10(202.16)	2148.96(341.64)	59.326(87.76)
1998-99	634.30(204.15)	2365.56(376.08)	58448(86.46)
1999-00	644.87(207.55)	2605.05(414.15)	53209(78.72)
2000-01	689.24(221.83)	2776.15(441.35)	52937(78.31)
2001-02	749.81(241.33)	2910.47(462.71)	45135(66.77)
2002-03	873.62(281.18)	3694.16(587.30)	44167(65.34)
2003-04	1080.00(347.60)	5198.53(826.96)	43743(64.71)
2004-05(P)	1270.48(408.91)	6148.61(977.50)	49794(73.66)

Source: Economic Surveys, Govt. of OrissaP- Provisional, Numbers in brackets denote indices under respective column and of corresponding year

Graph I: Comparative Picture of Value of Minerals and Employment in Mineral Activities



STATE EARNINGS FROM MINERAL ROYALTY

Royalty from major minerals received during 2003-04 by the state of Orissa was Rs. 515.99 crore i.e. 9.92 percent of the total value of minerals produced that year. Total mineral revenue from major minerals during 2003-04, however, was 9.99 percent of the value of minerals extracted. Royalty thus constitutes the prime portion of the revenue. Surface rent, dead rent and other processing charges comprise a meagre 0.07 percent of the mineral revenue. Mineral revenue both of major and minor minerals is mentioned in the state budget under the Head-0853 of non-tax revenue, although Supreme Court decreed that 'Royalty is a tax'.

Royalty on major minerals constitute the greater portion of the mineral revenue. Rents, fees and penalties form an insignificant part of the revenue. Out of the mineral revenue the portion other than royalty is hardly one percent of the royalty and 0.1 percent of the value of minerals. The break-up of mineral revenue from major minerals presented in **Table IV** reveals the position candidly. Figures for other years are not very much different.

Table IV: Revenue from Major Minerals in Orissa for 2003-04

Sl.No.	Fees / Rents	Amounts (in Rs.)
1.	Reconnaissance Permit Fee	Nil
2.	Application fee for	
	Prospecting License (PL)	81250
	Mining Lease	1464500
3.	Prospecting Fees	30774
4.	Survey and Demarcation Fees	7194
5.	Fees under OM & PTS (Orissa Mineral (Prevention of Theft, Smuggling and other unlawful activities Act, 1989)	
	License Fees	7604150
	Permit Fees	1065151
6.	Application Fees for	
	Renewal/Transfer of ML	5000
	Revival of ML	7506
7.	Fees for Mining Plan Approval	38000
8.	Dead Rent (D.R.)	12076613
9.	Surface Rent (S.R.)	716999
10.	Interest	11854894
11.	Agency Fees	11297634
12.	Total	46249665
13.	Royalty	5159865706
14.	Grand Total	5206115371

NB: Other than royalty collections in mineral revenue (major) as % of value of minerals in 2003-04 is only 0.089
Source: Parliament papers, different years

While the government, who owns the land in which minerals occur receives an average 10 percent of the annual mineral wealth excavated from the land, the rest 90 percent is enjoyed by the lessee- be a trader, an industrialist or even a government company like Orissa Mining Corporation. In fact India provides the cheapest mining lease in the whole world. It is the mining lease that attracts the multinationals to invest in industries besides the market boom in one or more particular items. Sharing of the wealth with meagre 10 percent of benefit by the owner and 90 percent of benefit by the lessee is certainly unjust. Hence, the law should be forthwith suitably amended to benefit the actual owner of the land i.e. government instead of the lessee.

Table V of statement showing the rate of royalty on different minerals at different points of time expressed both on tonnage and on Pit Mouth value (ad-valorem basis) may be perused for comparison.

Table V : Statement Showing Rate of Royalty on Different Minerals With Date of Revision vis-a-vis Pit Mouth Values (PMV)

Sl.No.	Ore / Mineral	Grade	Prior to 10.11.62			From 10.11.62			
			Rate of Royalty	PMV (Rs. / tonne)	Royalty	Grade	Rate of Royalty (Rs. / tonne)	PMV (Rs. / tonne)	Royalty expressed as % of PMV
1	2	3	4	5	6	7	8	9	10
	Iron ore	Used for extraction of iron	5 % of PMV Minimum 0.50	7.80	0.39	+62 % Fe -62 % Fe	1.50 1.00	7.80	19.23 12.82
		Used for other purpose	5 % of PMV Minimum 1.00	-	0.39	Ore Fines	0.25	-	3.21
2.	Manganese ore	Dioxide	15 % of PMV Minimum 3.00	400.00	60.00	Dioxide	15.00	40.00	3.75
		+ 45 % Mn	71 % of PMV Minimum 2.00	88.00	6.60	+ 45 % Mn	6.00	88.00	6.82
		- 45 % Mn	5 % of PMV Minimum 1.00	35.00	1.75	+ 35 % Mn -35 % Mn	3.00 2.00	35.00 20.00	8.57 10.00
3.	Chromite	+ 45 % Cr ₂ O ₃	10 % of PMV Minimum 2.25	82.00	8.20	+ 45 % Cr ₂ O ₃	7.00	82.00	8.54
		- 45 % Cr ₂ O ₃	71 % of PMV Minimum 1.12	82.00	6.15	- 45 % Cr ₂ O ₃	4.00	-	4.68
4	China clay	No grade	71 % of PMV	9.50 76.00	0.71 5.70	No grade	71 % of PMV	9.00 76.00	-
5.	Graphite	No grade	10 % of PMV	230.00	23.00	No grade	10 % of PMV	230.00	-
6.	Coal	No grade	5 % of FOR	23.50	1.18	No grade	5 % of For Minimum 0.50	23.50	-
7.	Limestone	No grade	5 % of PMV Minimum 0.37	9.64	0.48	No grade	0.75	9.64	7.78
8	Dolomite	No grade	5 % of PMV Minimum 0.25	12.48	0.72	No grade	1.00	12.48	8.01
9.	Fireclay	No grade	5 % of PMV	10.00	0.50	No grade	1.00	10.00	10.00
10.	Quartz & Quartzite	No grade	5 % of PMV	6.50	0.33	No grade	5 % of PMV	6.50	-
11	Bauxite	-	-	-	-	-	-	-	-

Table V Continue.....

Sl. No.	From 01.07.68				From 01.03.71				From 12.06.78			
	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV
	1	2	3	4	5	6	7	8	9	10	11	12
	+ 62 % Fe	1.50	8.35	17.96	+ 62 % Fe	1.50	10.80	13.89	Lumps + 65 % Fe + 62 % Fe + 60 % Fe - 60 % Fe	4.00 3.00 2.00 1.50	14.75 - 9.50 -	27.12 31.58 21.05 15.79
1.	- 62 % Fe	1.00	-	18.18	- 62 % Fe	1.00	-	9.26	Fines + 65 % Fe + 62 % Fe + 60 % Fe Con. 40 % Fe or less	2.50 1.50 1.00 0.50	-	-
2.	Dioxide	15.00	457.00	3.28	Dioxide	15.00	455.00	3.30	Dioxide	15.00	495.00	3.03
	46 % Manganese	6.00	92.00	6.52	+46 % Mn	6.00	90.00	6.67	+46 % Mn	6.00	145.70	4.12
	+ 35 % Manganese	3.00	41.00	7.32	+35 % Mn	3.00	43.00	6.98	+35 % Mn	3.00	88.25	3.40
	+ 25 % Manganese	2.00	21.00	9.50	+25 % Mn	2.00	22.00	9.09	+25 % Mn	2.00	42.00	4.76
	- 25 % Manganese	1.00	-	-	-25 % Mn	1.00	11.00	9.09	-25 % Mn	1.00	28.00	3.57
3.	+ 45 % Cr ₂ O ₃	10.00	124.65	8.02	+ 45 % Cr ₂ O ₃	10.00	128.00	7.81	+ 45 % Cr ₂ O ₃	10.00	560.00	1.09
	- 45 % Cr ₂ O ₃	6.00	38.65	15.52	- 45 % Cr ₂ O ₃	6.00	63.00	9.52	- 45 % Cr ₂ O ₃	6.00	339.00	1.77
	Concentrate	3.00	79.65	3.77	Concentrate	3.00	108.00	2.78	Concentrate	3.00	274.00	1.79

Table V Continues.....

Sl. No.	From 01.07.68			From 01.03.71			From 12.06.78					
	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV
	1	2	3	4	5	6	7	8	9	10	11	12
1.	Crude	1.00	13.00	7.69	Crude	1.00	13.00	7.69	Crude	1.00	35.00	2.86
	Washed	5.00	85.00	5.88	Washed	5.00	90.50	5.52	Washed	5.00	180.00	2.78
	+ 80 % FC	15.00	-	3.00	+ 80 % FC	15.00	600.00	2.50	+ 80 % FC	15.00	750.00	2.00
2.	+ 40 % FC	10.00	90.00	11.11	+ 40 % FC	10.00	100.00	10.00	+ 40 % FC	10.00	350.00	2.86
	- 40 % FC	3.00	50.00	6.00	- 40 % FC	3.00	60.00	5.00	- 40 % FC	3.00	124.00	2.42
3.	No grade	0.50	34.00	1.47	Selected Gr.				Selected Gr.			
					Grade I				Grade I			
					Grade II & III				Grade II & III			
					Ungraded				Ungraded			
4.	+ 45 %	1.25	16.00	7.81	+ 45 %	1.25	20.25	6.17	No grade	2.50	34.50	7.25
	CaO				CaO							
	- 45 %	0.75	-	4.69	- 45 %	0.75	-	3.70	-	-	-	-
	CaO				CaO							
5.	No grade	1.75	23.00	7.61	No grade	1.75	24.00	7.29	No grade	3.00	44.50	6.74
6.	No grade	1.25	11.50	10.87	No grade	1.25	12.40	10.08	No grade	2.00	32.65	6.13
7.	No grade	1.00	11.75	8.51	No grade	1.00	10.77	9.29	No grade	1.25	15.70	7.96
	-	-	-	-	-	-	-	-	-	-	-	-

Sl. No.	From 23.07.81				From 05.05.87				From 1989			
	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV
	1	2	3	4	5	6	7	8	9	10	11	12
	Lumps				Lumps				Lumps		63.63	
	+ 65% Fe	4.00			+ 65% Fe	6.00			+ 65% Fe	6.00		9.43
	+ 62 % Fe	3.00			+ 62 % Fe	3.50			+ 62 % Fe	3.50		6.15
	+ 60 % Fe	2.00	38.63	6.7	+ 60 % Fe	2.50	6.47	7.35	+ 60 % Fe	2.50	56.92	4.39
	- 60 % Fe	1.50			- 60 % Fe	2.00			- 60 % Fe	2.00		3.51
	Fines				Fines				Fines			
	+ 65% Fe	2.50			+ 65% Fe	3.50			+ 65% Fe	3.50		
	+ 62 % Fe	1.50			+ 62 % Fe	2.50			+ 62 % Fe	2.50		
	+ 60 % Fe	1.00	29.90	5.40	+ 60 % Fe	1.50	60.91	1.84	+ 60 % Fe	1.50	62.00	3.20
	Con .40 %	0.50			Con .40 %	0.50			Con .40 %	0.50		
	Fe or less				Fe or less				Fe or less			
	Dioxide	15.00	709.00	2.12	Dioxide	45.00	1260.00	3.57	Dioxide	45.00	1541.00	2.92
	+ 46 % Mn	6.00	241.00	2.49	+ 46 % Mn	15.00	457.00	3.28	+ 46 % Mn	15.00	502.55	2.98
	+ 35 % Mn	8.00	140.00	2.14	+ 35 % Mn	9.00	221.00	4.06	+ 35 % Mn	9.00	263.65	3.41
	+ 25 % Mn	2.00	52.00	3.85	+ 25 % Mn	6.00	98.30	6.10	+ 25 % Mn	6.00	155.84	3.85
	-25 % Mn	1.00	33.00	3.03	-25 % Mn	2.00	-	-	-25 % Mn	2.00	-	-
	+48% Cr ₂ O ₃	50.00	650.00	7.69	+48% Cr ₂ O ₃	60.00	1550.75	3.87	+48% Cr ₂ O ₃	60.00	2273.79	2.64
	+40% Cr ₂ O ₃	25.00	517.30	4.83	+40% Cr ₂ O ₃	30.00	1237.40	2.42	+40% Cr ₂ O ₃	30.00	1740.54	1.72
	-40% Cr ₂ O ₃	15.00	334.00	4.49	+30% Cr ₂ O ₃	20.00	719.00	2.78	+30% Cr ₂ O ₃	20.00	888.90	2.25
					-30% Cr ₂ O ₃	5.00	-	-	-30% Cr ₂ O ₃	5.00	-	-
	Crude	4.00	35.50	11.27	Crude	8.00	50.00	16.00	Crude	8.00	60.20	13.29
	Washed	18.00	205.00	8.78	Washed	35.00	355.65	9.85	Washed	35.00	445.25	7.86

Table V Continues.....

From 23.07.81			From 05.05.87			From 1989					
Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV	Grade	Rate of Royalty	PMV (Rs./ tonne)	Royalty expressed as % of PMV
1	2	3	4	5	6	7	8	9	10	11	12
5. a) +80%FC	50.00	1000.00	5.00	a) +80%FC	75.00	1200.00	6.25	a) +80%FC	75.00	1500.00	5.00
b) +40%FC	30.00	700.00	4.29	b) +40%FC	40.00	800.00	5.00	b) +40%FC	40.00	1000.00	4.00
c) -40%FC	12.00	130.00	9.23	c) +20%FC	15.00	241.68	6.21	c) +20%FC	15.00	772.00	1.94
				d) -20%FC	10.00			d) -20%FC	10.00	235.50	4.25
6 a) Gr. A	6.50	167.00	3.89	a) Gr. A	6.50	355.33	1.83	a) Gr. A	6.50	403.33	1.61
b) Gr. B	6.50	157.00	4.14	b) Gr. B	6.50	324.33	2.00	b) Gr. B	6.50	368.33	1.76
c) Gr. C	5.50	140.00	3.93	c) Gr. C	5.50	284.33	1.93	c) Gr. C	5.50	322.33	1.71
d) Gr. D4.30	130.00	3.31	d) Gr. D	4.30	226.33	1.90	d) Gr. D	4.30	256.33	1.68	
e) Gr. E	4.30	101.00	4.26	e) Gr. E	4.30	186.33	2.38	e) Gr. E	4.30	204.33	2.10
f) Gr. F	2.50	77.00	3.25	f) Gr. F	2.50	145.33	1.72	f) Gr. F	2.50	164.33	1.52
g) Gr. G2.50	50.00	5.00	g) Gr. G	2.50	104.33	2.40	g) Gr. G	2.50	118.33	2.11	
7. No Grade	4.50	53.00	8.49	No Grade	10.00	87.65	11.41	No Grade	10.00	93.40	10.71
8. No Grade	5.00	60.00	8.33	No Grade	8.00	89.26	8.96	No Grade	8.00	112.90	7.09
9. No Grade	4.00	55.00	7.27	No Grade	5.00	95.50	5.24	No Grade	5.00	120.10	4.16
10. No Grade	2.50	33.00	7.58	No Grade	5.00	42.00	11.90	No Grade	5.00	95.70	8.98
11. No Grade	4.00	53.30	7.54	No Grade	8.00	113.72	7.00	No Grade	8.00	154.00	5.19

Source: Gazette of India, different years

Table V (i) Rate of Royalty on Major Minerals

Sl. No	Mineral	Rate of Royalty Rs./tonne	PMV Rs./tonne	Royalty as % of value per tonne ad-volorem
2001-02				
1	Iron ore	12	202.33	5.93
2	Chromite	157.5 (Calculated)	2100.00	7.5
3	Manganese	19.80	989.38	3 % of all grade
4	Bauxite		277.35	1 % of concentrate
5	Coal E Grade	70	445.00	15.7
6	Coal F Grade	50	351.00	14.2
2004-05				
1	Iron ore	14 (Average)	418.00	3.3
2	Chromite	110	1467.00	7.5
3	Manganese	50	1666.00	3
4	Coal E Grade	85	530	16
5	Coal F Grade	65	420	15.5
<i>Source: Gazette of India, different years</i>				

The comparison stands testimony to the fact as to how meagre are the revised royalties. The Central Government never enhanced the royalty rate in order to reach nearer twenty percentum of PMV or reach to the utmost, so that the State Government would derive the maximum income from its own natural resources. The demand on minerals was burgeoning with passage of time after independence, both for export of ores and for consumption as raw materials in internal industries, but the attitude and policy of the Central Government failed to realize that the revenue from royalty is increased to the utmost in order to benefit the mineral producing states. However, there was a slump in world steel production during 70s and as a consequence to it, a considerable decline in iron-ore exploitation in Orissa appeared. During 1971-72 iron ore production was 65.63 lakh tones, following years it declined to 63.44, 59.66 and 5432 lakh tones in 1972-73, 1973-74 and 1974-75 respectively. Similarly from 1977-78 till 1984-85 another slow-down of iron ore production due to sluggishness both in domestic and world steel market occurred. The following table provides indication about an approximate average PMV of different minerals at different points of time and also royalty per tonne of mineral and royalty per value of tonne of the mineral at the Pit's head.

Value of minerals other than atomic minerals but including fuel minerals of both of the whole country and of Orissa is given in **Table VI** for different Years. In 1965 value of minerals produced in Orissa was only 7.45% of the value of minerals in India. The proportion came down to 5.38% in 1975; it

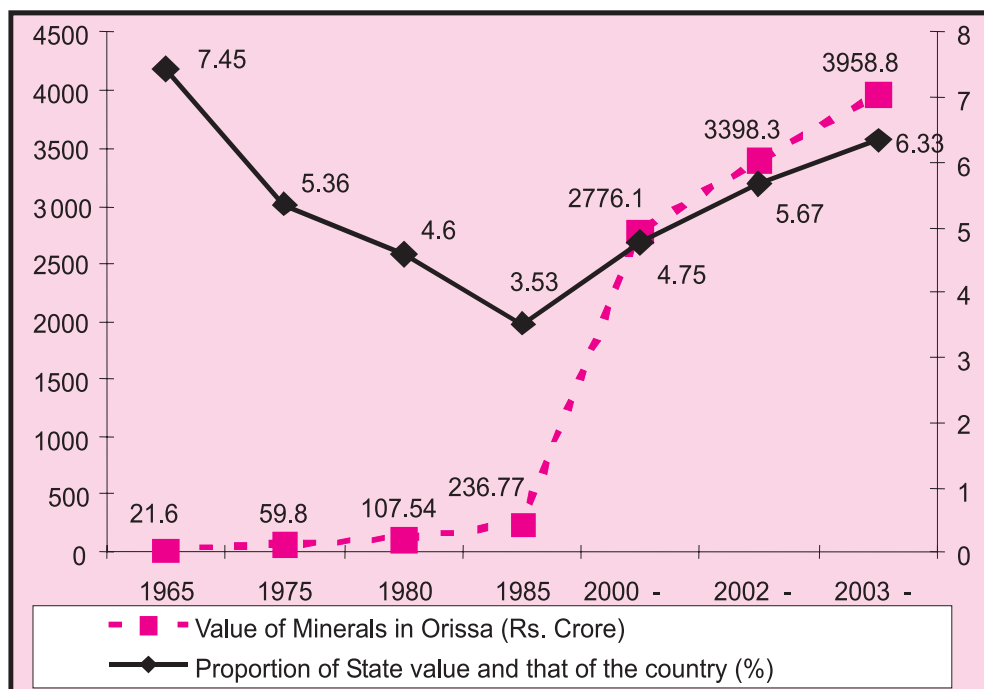
further fell down to 4.6% in 1980 and 3.53% in 1985. During 2000-01 the proportion went up to 4.72% and in 2002-03 it was further increased to 5.28%. This increase in proportion is due to both domestic and international steel market boom and rise of iron ore sale price during the last five years. All said and done, given rich mineral wealth reserve in the state of Orissa, the extraction of minerals deserve to be accelerated and the extent loop holes in mining business must be plugged in order to achieve better results.

Table VI: Value of Minerals in Orissa and India

Year	Value of Minerals in India (Rs. Crore)	Value of Minerals in Orissa (Rs. Crore)	Proportion of State country (%)
1965	290.52	21.65	7.45
1975	1111.96	59.85	5.36
1980	2130.04	107.54	4.6
1985	6715.03	236.77	3.53
2000-2001	58765.25	2776.15	4.75
2002-03	59970.88	3398.38	5.67
2003-04	62525.56	3958.88	6.33

Source: Mineral Product, Statistics, IBM, GOI

Graph II: Comparative Picture of Value of Minerals in Orissa and India



Royalty as percentage of value of minerals of Orissa / (major minerals) / for different years have been mentioned in **Table VII**. It varies from 3.55% in 1990-91 to 14.06% during 1995-96. The value of minerals excludes the value of Atomic Minerals and Minor minerals. Royalty from only major minerals are being used.

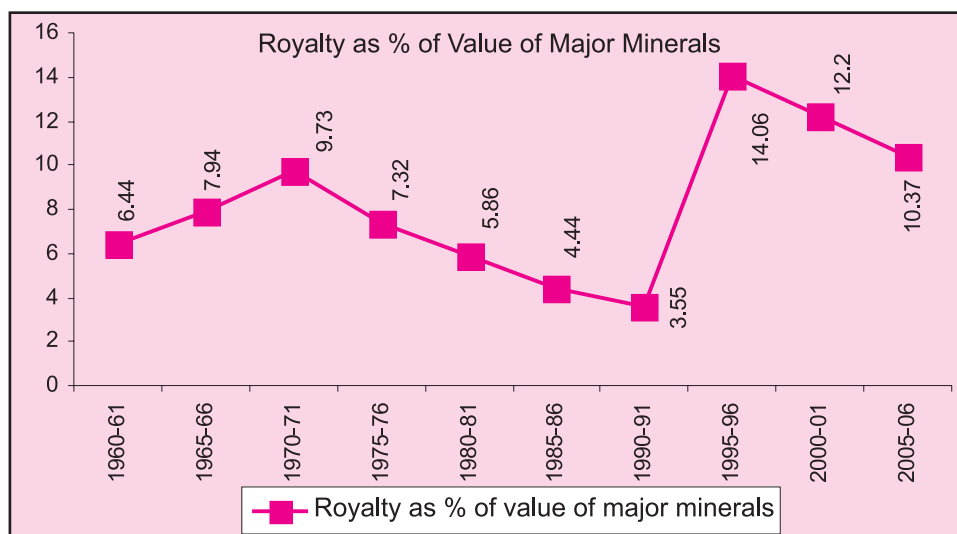
Table VII: Value of Minerals and Royalty as % of the value of Major Minerals

Year	Value of Minerals in India (Rs. Crore)	Royalty (Rs. Crore)	Royalty as % of value of major minerals
1960-61	10.41	0.67	6.44
1965-66	21.65	1.72	7.94
1970-71	22.72	2.21	9.73
1975-76	61.64	4.51	7.32
1980-81	91.10	5.34	5.86
1985-86	219.63	9.75	4.44
1990-91	629.01	22.34	3.55
1995-96	1634.03	229.74	14.06
2000-01	2776.15	338.84	12.20
2005-06	6604.82	711.59	10.37

Source: Economic Survey of Orissa

From the table it has become evident that the lessee pays a marginal share to lessor-the owner of the mineral bearing land-be it state government or private individual. Royalty is a share of the wealth generated periodically, but the irony is that the owner receives a paltry share. Sooner the injustice is removed, better it is. A portion of the harvest is evidently justified and the optimum share in favour of the owner ought to be worked out judiciously.

Graph III: Royalty as a percentage of value of major minerals



Royalty therefore should be on ad-volorem basis as were provided in the First Schedule of the Mineral Concession Rules, 1949 and the Second Schedule of the un amended original Mines and Minerals (Regulation and Development) Act, 1957. First Proviso of S.9 of the Act should read, “The rate of royalty shall not be less than twenty percent” instead of “shall not exceed twenty percent of the sale price of the mineral at the pit’s head.

CHAPTER -II

MINERAL POLICY ENVIRONMENT IN INDIA: LOSS OR GAIN FOR THE STATES?

Minerals are non-renewable resources and are state's property. Land is also the property of state and land as well as minerals comes under the 'State List', finding mention as List II under the Seventh Schedule of the constitution. But, Government of India has enacted Central law to decide about the revision of royalty and other rents and charges. Thus with the Central law deciding the rate of collection of revenue from different minerals, the states have little independence to formulate their own plan to mobilise additional resources from this sector. Hence, though the mining lease holders earn huge money by selling the minerals, the states get little revenue. In this context, if the states are allowed to revise the royalty rates and other rents and charges, their revenue earning from the sector can be significantly enhanced without affecting the interest of the industry and market. This deserves a careful objective discussion and intensive lobbying with the Central Government for devolution of the right of royalty revision to the states. Section 9(3) of Mines and Minerals (Development and Regulation) Act, 1957, a Central law reads as under:

The Central Government may, by notification in the Official Gazette amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

This provision of law is, however, detrimental to the states' interest. The Central Government never revises the royalty of major minerals after the expiry of 'three' years nor revises the rates, whenever they like to go for the revision. They take the alibi that 'three years' period is not mandatory. Thus, the language of the provision provides the Central Government an escape route. Being aggrieved by consistent negligence and injustice of the Central Government in matters of royalty, states raised their grievances before Sarkaria Commission. Justice R. S. Sarkaria, Chairman of the Commission submitted his report in 1988 to the Govt. of India. He had recommended for the revision of the rate of royalty every two years and well in time, as and when they fall due. The Central Govt. has not paid any heed to this recommendation as yet. The Commission's observations are mentioned in the chapter "**Royalty on Minerals, Crude Petroleum etc. Commission on Centre-State Relations Report, Chairman-Justice R. S. Sarkaria, Part 1, P- 313**".

The Sarkaria Commission had also made certain observations, which relate to allegations of some state governments regarding inadequate royalty on minerals and a major demand of the state

governments for payment of royalty on an ad-volorem basis and not based on a specific amount per time, especially in view of frequent and sharp increases in the prices of minerals.

Similarly, grant of reconnaissance permit i.e. permit for operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation. Prospecting licenses i.e. license granted for the purpose of undertaking, operations of exploring, locating or proving mineral deposits and mining lease i.e. lease granted for the purpose of undertaking any operation for winning any mineral against paltry fees under this Central Act MM(DR) Act, 1957 and Centre Rule namely Mineral Concession Rules, 1960 made there under. Non refundable fee of only five rupees per square kilometer, fifty rupees for first kilometer and ten rupees in subsequent kilometre with application fee of Rs. 250 for first kilometre and Rs.50 for subsequent kilometer and a non-refundable fee of two thousand and five hundred rupees receptivity for the above purposes are charged. 1 sq. km = 100 hectare = 247.10 acre

The lessee shall, for every year except first year of lease, pay such yearly **dead rent** at the rate specified in the Third Schedule of the Act, again a very nominal charge of mining lease < 50 hectare; > 50 <100 hectares and > 100 hectares at Rs. 70, Rs.100 and Rs.140 respectively from 2nd to 5th year and so on. The law provides, however, the lessee shall be liable to pay dead rent or royalty in respect of each mineral whichever is higher but not both.

The lessee shall also pay for the surface area used by him for the purpose of mining operations, **Surface rent** and **Water rate** at such rate not exceeding the land revenue, water and cesses accessible on the land, as may be specified by the State Government.

The lessee shall pay the royalty in respect of any mineral **removed or consumed** (not necessarily sold) at the rate specified in Second Schedule. However, on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. If, on later dates the dumped tailings or reject are sold or consumed, royalty shall be payable.

Besides receiving royalty, states did impose 'Cess' on minerals. Orissa in particular was collecting 'cess' under 'The Orissa Mining Area Development Fund Act, 1952'. This act was challenged in the Supreme Court of India in 1959 in Hingir-Rampur Coal Co. Vs. State of Orissa case. The Supreme Court held that the 'cess' under the Orissa Mining Area Development Fund Act, 1952 was a 'fee' and declared impugned state Cess Law *intra vires*. The court also observed that the Mines and Minerals (Regulation and Development) Act, 1948-the Central Act under question was a legislation under the Government of India Act, 1935 i.e. it was a law by Dominion Legislature and since the Central Act

was not “declared by parliament as law” as required under entry 54 of list I (Union List) of the Seventh Schedule it did not have the power to limit the jurisdiction of the State Legislature.

(Judgment-1960, November, A.I.R. 1961 S.C.-459)

Two years later in 1962, the Supreme Court again heard the Civil Appeals of the State of Orissa Vrs. M/s. M.A. Tulloch & Co. and Mishrilal Jain and held on the 16th, August 1963 that the Orissa Mining Area Development Fund Act (27 of 1952) was superseded by MM(RD) Act, 1957. The main contention was that the services purported therein rendered by the impugned State Act (27 of 1952) had been taken up by the Central Legislation.

(State of Orissa Vrs. M.A. Tulloch, A.I.R. 1964 S.C.-1258)

Further, in another Civil Appeal case H.S.R. Murthy Vrs. Collector of Chitoor (Andhra Pradesh), the Supreme Court held on the 4th Feb, 1964 that ‘cess’ collected as ‘land cess’ under Madras District Board Act (14 of 1920) was a ‘tax’ and well within the jurisdiction of the state to collect tax under entry 49 and 50 of state list (List II) of the Seventh Schedule.

(A.I.R. 1965 S.C.-177)

Since the judgment of ‘Murthy case’ in 1964, the practice of collection of ‘cess’ on minerals remained in vogue unimpaired for a period of more than twenty five years, when in India Cement Ltd. Vrs. State of Tamil Nadu case the Supreme Court overruled the earlier ‘Murthy case’ judgement on 25.10.1989.

(A.I.R. 1990 S.C.-85)

In ‘India Cement’ case, a seven-Judge Bench of the Supreme Court struck down the levy of cess under Tamil Nadu Act as ‘beyond the legislative competence of the State Legislature’.

Again in a series of appeals from the state of Orissa, Bihar and M. P., the Supreme Court in 04.04.1991 held the similar view as that in ‘India Cement case’ and observed:

“The manner in which the levy initially introduced a uniform cess on land, was slowly converted, qua mining lands into a levy computed at multiples of the royalty amounts paid by the lessees there of seem to bear out the contention that it is being availed of a tax on the royalties rather than one on the annual value of the land containing the minerals. One can legitimately conclude that royalty has ceased to be a mere measure or yard-stick of the tax and has become the very subject matter thereof.”

For the reasons discussed above, we repel the contention of the state seeking to justify the levy under Entry 45, 49 and 50 of the List II of the Seventh Schedule.

Further in Para 34 of the India Cement Case, the Supreme Court held: “We are of the opinion that royalty is a tax and as such a cess on royalty being a tax on royalty, is beyond the competence of the

State Legislature because Section 9 of the Central Act covers the field and the State Legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess or royalty cannot be sustained under Entry 49 of List II as being a tax on land, Royalty on mineral rights is not a tax on land but payment for the user of the land.”

Seventh Schedule of the Constitution of India State List (List-II)

Entry 45 – Land Revenue, including the assessment and collection of revenue, the maintenance of land records survey for revenue purposes and records of rights and alienation of revenues.

Entry 49 – Taxes on lands and buildings

Entry 50 – Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

The latest judgment of the Supreme Court in 1991 has caused substantial erosion in the revenue base of mineral producing states. The resource need for the development and welfare measures of these states deserve no over emphasis. Most of the weaker states like Orissa, Bihar, Jharkhand, Chhatisgarh and Madhya Pradesh are virtually starving for resources to meet their day to day expenditures and such a judicial pronouncement by the Supreme Court in quashing the State Cess Laws on minerals and asking the states to refund the cess already collected from particular dates – different for different states have put the states like Orissa in great financial difficulties. States were much better off when they were collecting both royalty and cess together, despite intermittent disputes in the High Courts and Supreme Court. It is painful that the mineral producing states have failed to put their collective pressure on the Centre so far to force it divest itself of the power to levy royalty and delegate the authority-to impose tax, rents and fees to respective mineral producing states.

Interestingly the Supreme Court did not touch West Bengal Cess Law. The case is still pending before the Supreme Court for last fifteen years. It is told that W.B. Cess Law, being a pre-constitution law, is protected under Act 372 of the Constitution of India. W.B. Government had imposed W.B. Rural Employment and Production Cess on coal and other minerals at 38 percent of the Pit Mouth Value and W.B. Primary Education Cess at 7 percent of PMV. This practice was in vogue from 1991 (Supreme Court Judgment) till 30.11.1998. From total 45 percent of PMV of minerals, W.B. has reduced cess to 20 percent and 5 percent respectively. Thus W.B. is collecting 25 percent of the value of the minerals besides pre-1991 royalty and rents, and other fees at current rates on minerals including coal as mineral revenue. But it is an irony that other states are deprived of these benefits.

Problems of revising royalties have been raised before successive Finance Commissions. The Eleventh Finance Commission (2000-05) made the recommendation as follows:

3.53 We recommend that royalty rates on minerals be revised regularly and the decision about the revision of the rates be taken well before the date on which the revision falls due so that it can be notified immediately after the completion of every three year period as provided under law. In case the process of revision is not completed by the date the new revision is due, the states should be entitled to compensation.

3.54 Fixation of royalty rates is done by the concerned Ministry/Department. For the sake of transparency and fairness the task of making recommendations on royalty rates should be entrusted to an independent body. (*Eleventh Finance Commission Report, Page-29*)

The Central Government did not pay any heed to these recommendations. The Legislature of Dominion of India enacted the first legislation on mines and minerals on September 1948. This enactment on the Mines and Minerals (Regulation and Development) Act, 1948 was done in pursuance of the power conferred by the Entry 36 in the Federal Legislative List of the Government of India Act, 1935. The Entry reads:

Entry 35 in List I – Regulation of mines and oilfields and mineral development to which such regulation under Federal Control is declared by Federal law to be expedient in the public interest.

As regards royalty on minerals, The Mineral Concession Rules, 1949 made under The Mines and Minerals (Regulation and Development) Act, 1948 had made provision in Rule 41 among various conditions of mining lease that-

The lessee shall pay royalty on minerals dispatched from the leased areas at the rate specified in First Schedule to these rules as in force on the date of the grant of lease;

Provided that the lessee shall pay royalty as such revised rates as may be notified from time to time;

Provided that the rate of royalty shall not be revised more than once in two years, nor it shall be in excess of twenty percent of the sale value of mineral at the pit's market.

After independence the Industrial Policy Resolution of April 6, 1948, which included minerals amongst the industries, accelerated the process of enactment of a comprehensive MM (RD) Act. It came into force on October 25, 1949 along with Mineral Concession Rules, 1949 that was the operating rules of the Act. This MM (RD) Act, 1948 made the provision for the Central Government to levy and collect royalties, fees or taxes in respect of minerals mined, quarried, excavated or collected [5.6(2)(i)].

A comprehensive Post Consultation legislation – Mines and Minerals (Regulation and Development) Act, 1957, replaced the old law. It came into force from June 1st 1958. To the chagrin of mineral producing states, this Central Act made provision in S9 (2) The holder of a mining lease granted on

or after the commencement of this Act shall pay royalty in respect of any mineral removed by him from the leased area at the rate for the time being specified in the second schedule in respect of that mineral.

- (3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification.

Provided that the Central Government shall not

- a) Fix the rate of royalty in respect of any mineral so as to exceed twenty percent of the sale price of the mineral at the pit's head.

Or

- b) Enhance the rate of royalty in respect of any mineral more than once during any period of four years.

However, the royalty on each of the minerals at the second schedule of MMRD Act, 1957 was on ad-volorem basis.

At the time of consideration of MMRD Bill, 1957 in Lok Sabha, Sri Chintamani Panigrahi and Sri Surendra Mohanty MPs from Orissa raised two vital issues.

“In the name of uniformity and co-ordination, the Central Government should not try to deprive the states of their legitimate rights so far as the development of mines and their regulations are concerned. I find that throughout the Bill an attempt has been made to assign a secondary place to the States, so far as their rights of giving lease or their rights of regulating the mines are concerned.” (*Sri C.M. Panigrahi M.P. 21st, December, 1957 Lok Sabha Debates P.-7096*)

“The State Government is even not being permitted to fix its quantum of royalty.” (*Sri Surendra Mohanty M.P. ibid Page-7105*)

Replying to the debate Shri K. D. Malaviya, Minister of Mines and Oil, Govt. of India said.

“I want to assure Shri Panigrahi that it is the policy of the Central Government and our Ministry to see to it that the revenue from royalty is increased to the utmost, consistent with the export trade of the country, so that the **State Governments could derive the maximum income from their own natural resources and it will be our consistent effort to stick to this goal.**”

By a subsequent amendment in August, 1972 Proviso (a) to S. 9 (3) of the Act which was read as “Provided that the Central Government shall not (a) fix the rate of royalty in respect of any mineral so as to exceed twenty percent of the sale price of the mineral at the pit's head,” was deleted by an amendment in the Parliament. Participating in the debate Sri Lokanath Mishra M.P (Raja Sabha) spoke emphatically on Aug 30th, 1971.

“Primarily mines belong to the states and it is only by manipulation that the Centre has been intervening and they have been eroding the powers of the states by taking upon themselves responsibilities which are not their own.... A time may come when the states would fight back and get back their authority and powers, which are being used by the Centre. I wish a time comes in near future when they revert to their old position and take back what belonged to them originally.”

This ‘deletion’ announced the end of ad-valorem royalty and ushered in the era of flat rate of royalty and twenty percent of PMV in revision of royalty as was assured in the Parliament has never reached as yet.

CHAPTER III

COAL IN ORISSA: RESERVE, PRICING AND ROYALTY

Coal is one of the major minerals of Orissa and the state has the second largest coal reserves in the country. Given the recoverable reserve of 61,999 million tones of coal, Orissa stands second in the country- the state having the largest coal reserve being Jharkhand. Production wise Orissa stands 3rd in the country. The first and second coal producing states are Jharkhand and Chhatisgarh respectively. However, so far as value of production is concerned Orissa ranks seventh among eight coals producing states. This disturbing factor of coal price in Orissa should be objectively probed. Be that as it may, more than fifty percent of mineral production and value of minerals produced are due to coal alone. As regards mineral revenue coal accounts for nearly sixty percent of the total revenue from minerals. During 2005-06 more than seventy million tones on coal was despatched worth 481.27 crores of rupees. It yielded Rs. 460 crore towards revenue out of total mining revenue of Rs. 805 crore from both major and minor minerals, i.e. more than fifty seven percent of revenue from coal.

In Orissa, Lt. Kittoe first discovered coal in 1839 in Talcher-a feudatory state within the geographical boundary of the then Orissa. The earliest record of exploration in the Talcher coal field dates back to 1875. From Nirgundi Black Hut to Talcher Branch Rail Line of Kharagpur-Cuttack Main Line was completed on January 20, 1927. The length of the Branch Line is 61.52 miles i.e. 100.59 kms. Fuel for factories apart coal was used as the fuel for Railway Steam engines. V. Ball discovered Ib-River Coalfield in 1871. In the Ib-River coalfields the drilling operations was initiated in 1883-84 by W. King. Yet the real effort for coal reserve assessment in a systematic and consistent way was started only in the post-nationalization era of the coal industry since 1973. GSI (Geological Survey of India), however, entered Talcher coalfields for regional exploration in 1963 and Ib coalfields in 1964-65 continuing their endeavour to enhance reserves. Although a substantial area has been identified as coal reserves, the state is not yet saturated with coal discoveries and discovery of many more new reserve locations cannot be ruled out.

It is observed that the coals of Ib-River and Talcher coalfields have high moisture content (5.2% to 4%) and also are high in inherent ash contents. Further more Orissa coal by and large is highly interbanded. These above observations deserve to be reviewed by a group of experts vis-à-vis other coal available from different locations of the country.

Production, which was inaugurated with eighty tones of coal in 1875 by the Public Works Department, has reached 70.5 million tones in 2005-06. At present (2006), twenty-five mines are in operation. Out of them 8 are underground and 17 are opencast. During 2005-06, 68 million tones were obtained from open cast mines and the rest 2.5 million tones were from underground mines. The break-up of

production between Talcher and Ib-River coalfields in 2005-06 is 46 mt. and 24.5 mt of coal respectively. Coal produced in Orissa constituted approximately 20 % of the country's production during the same year. Orissa coalfields are operating under Mahanadi Coalfield Ltd. (MCL) – A subsidiary of Coal India Ltd (CIL) of Government of India. Table No. VII provides production figures of coal in Orissa at different points of time.

Table VIII: Production of all Minerals and Coal in Orissa (Lakh Tonnes)

Year	All Minerals	Coal	Coal as % of all Minerals
1970-71	121.71	14.94	12.3
1975-76	139.83	21.50	15.4
1980-81	140.08	30.09	21.5
1985-86	147.30	54.10	36.7
1990-91	319.7	207.08	66.6
1995-96	511.2	285.84	55.9
2000-01	689.24	478.0	69.4
2005-06	1396.78	705.45	50.5

Source: Economic Survey of Orissa and Mineral Statistics of India

The above table suggests that the production of coal moves at a faster pace than production of other minerals. In fact, there was a decline in the production of other minerals due to fluctuations in market demand particularly during 70s and first part of 80s. Faster growth of coal production is dependent on increase of thermal power plants.

Coal is broadly divided into two groups- Coking coal and Non-Coking coal. Coking coal is a superior type of coal having high degree of carbon concentration. It can be converted into coke by subjecting it to heat of high temperature; without air contact until substantially all components that easily vaporize have been driven off. The residue is chiefly CARBON, with minor amounts of hydrogen, nitrogen, sulphur and oxygen. Orissa does not possess reserves of coking coal as yet. Non-coking coal has been divided into Long-Flame and Non-long Flame coals and is divided into Seven Sub-groups (A to G). International grading structure of coal is based on Gross Calorific value (G.C.V.). The Useful Heat Value (UHV) for grading of non-coking coal was adopted in 1975 in the country on the basis of a national formula by which the ash content in the coal was being subtracted to obtain the Useful Heat Value (UHV). Roughly speaking, the amount of Kilocalories of heat is generated by burning one kg. of coal. Different grades of coal with UHV have been shown in the **Table IX**. Percentage of ash + moisture inherent in the coal is also indicated there-with.

Table IX: Ash Contents of selected Minerals

Grade	% of Ash+Moisture	UHV killo Cal/Kg of Coal
'A'	<9	>6200
'B'	19-23	6200-5600
'C'	23-28	5600-4940
'D'	28-34	4940-4200
'E'	34-40	4200-3360
'F'	40-47	3360-2400
'G'	47-55	2400-1300

Source: Parliament papers

Production figures indicate that among the coals produced every year 'F' grade coal consist of 86 to 93 percent, 'E' grade constitutes 2 to 11 percent, 'D' grade constitutes 3 to 5 percent, 'C' grade constitutes 0.5 to 2 %, 'B' grade constitutes 0.5 to 0.8 % and 'A' grade either does not exist or if exists the proportion is quite minimal say about 0 .02 % of the total coal production in Orissa. Similarly 'G' grade coal is negligibly available. Taking the production of coal in the country into account, it is seen that hardly 10 % of the entire production belongs to cooking coal category. Among non-cooking coal category production of 'A' grade coal is also negligible the proportion being between 1 to 1.5 %.

Production of 'F' grade coal in Orissa is about 93 % of state's total production, where as the proportion at all India level is hardly 32 to 33 %. 'F' grade coal production in Orissa is around 13 % of all India production (2001-02).

Royalty on coal has been most irregularly and indiscreetly revised. Not that royalty on other minerals is judiciously decided. Royalty revision is the most irksome area for the entire mineral producing state and their discontents are quite genuine.

Schedule I of the Mineral Concession Rules 1949 framed under the Mines and Minerals constitution law made the express provision of levy of royalty. Royalty on coal was levied at five percent of f.o.r. (Free on rails) price subjects to minimum of 8 anna i.e. 0.50 rupee.

Post constitution Mine and Minerals (Regulation and Development) Act, 1957 replaced the MMRD Act, 1948- a law enacted in Independent India, yet by the Dominion Legislature, as per the provision of the (Act 67 of 1957) Act coal royalty remained unchanged at five percent of f.o.r. price subject to a minimum of fifty naye paise per ton.

Royalty on ad-valorem basis however with minimal proportion remained in vogue for coal till February 19 1971, to be replaced by a flat rate system i.e. on tonnage basis. Royalties on different grades of coal were introduced differently. Charts of royalty revision dates for coal have been furnished below in order to depict the irregularities in revision.

Table X: Rates of Royalty Revision

Sl. No	Date	Description
1	25.10.1949	1 st provision of royalty (MMRD act, 1948)
2	01.06.1958	No Change (MMRD Act 1957 came into force. Provision for revision after four years)
3	19.02.1971	Changed to flat system (end of ad-volorem system)
4	14.07.1975	Royalty on tonnage system continued
5	13.02.1981	5 ½ years after (1986, provision for revision after three years)
6	01.08.1991	10 ½ years after
7	11.10.1994	3 years after (for the first time schedule was adhered to –Biju Patnaik factor)
8	16.08.2002	8 years after
9	Not yet	4 ½ years have already passed, no revision

Source: Gazette of India, different years

From **Table X** it is evident that there have been glaring inter revision disparities and discriminations among different grades of coal and also increasing intra grade disparities of royalty rates during different revision periods. In 1971 royalty rate for the highest-grade non-cooking coal i.e. select Grade A was Rs. 2/- per tonne. Royalty rate for the lowest grade non-cooking coal of Bengal-Bihar coalfields i.e. Grade II, III-A and III-B was Rs. 1.50/- per tonne. Thus the rate of highest-grade non-cooking grade coal was 33.33 % more than that of the lowest grade non-cooking coal. In the subsequent revision on 14.07.1975 the disparity rose to 42.86 %. During the next revision of royalty on coal the disparity of the royalty rate of the highest grade over the royalty rate of lowest non-cooking coal again rose to 160 %. Revision of royalty on august 1st 1991 took the difference to alarming height with the royalty rate of Grade A and B coal was 380 % more than that of the lowest grade i.e. grade F and G. Subsequent two revisions of 1994 and 2002 however, have brought down the disparities to 170 % and 154 % respectively. The rational approach should have been to maintain the disparity at 33.33 % all though the revisions. Similarly looking at inter-revision and inter-grade royalty rates it has become evidently clear that rate of royalty of August 2002 of Grade A coal over that of same grade coal of 1971 rate was 82.5 times of 1994 over 1971 royalty rate was 67.5 times; rate of royalty in 1994 of A and B grade coal over 1971 selected grade A was 60 times. Where as the royalty rate increase of August 2002 ‘F’ and ‘G’ grade was only 38.3 times that of the corresponding grade. The parity should have been maintained among all grades of coal during different revision period i.e. if the royalty rate of ‘A’ grade coal was increased 2.5 times in 1975 over that of 1971, the increase of royalty rate of ‘F’ Grade during the same period should have been 2.5 times instead of

2.33 times. Similarly, rate of royalty of the highest grade coal in August 2002 was increased 82.5 times over that of 1971 the rate of royalty of 'F' grade in 2002 revision should have been 82.5 times instead of only 38.23. These continuous disparities, adversely affected the states producing Power Grade (E, F, & G) coals. These disparities of affected states ought to be addressed properly for a fair deal by the central government.

Table XI: Rate of Royalty of Different Grades of Coal and Growing Disparities over Successive Revision

Grade	From 19.02.1971 Royalty Rate (Rs. / tonne)	From 14.07.1975 Royalty Rate (Rs. per tonne)	Grade	From 13.02.1981 Rate of Royalty (Rs. /tonne)	From 01.08.1991 Rate of Royalty (Rs. / tonne)	From 11.10.1994 Rate of Royalty (Rs. / tonne)	From 16.08.2002 Rate of Royalty (Rs. / tonne)
1.	2.	3.	4.	5.	6.	7.	8.
Non coking coal Selected Grade-A	2.00	5.00 (2.5)	Gr. A Gr. B	6.50 (3.25)	12.00 (60.0)	135.0 (67.5)	165.00 (82.5)
Selected Grade-B	1.90	4.50 (2.37)	Gr. C	5.50 (2.90)	75.0 (39.48)	95.0 (50.0)	115 (60.53)
Non coking coal Grade - I	1.75	4.00 (2.29)	Gr. D Gr. E	4.30 (2.46)	45.0 (25.71)	70 (40.0)	85 (48.57)
Outlying coal field Non coking coal Grade II & III	1.50	X		X	X	X	X
Grade II, III - A and III - B Bengal. Bihar Coal Fields - Non coking coal	1.70	3.50 (2.33)	Gr. F Gr. G	2.50 (1.47)	25 (14.70)	50 (29.41)	65 (38.23)
	33.33 % over the lowest royalty	42.86 % more than the lowest		160 % more than the lowest	380 % more than the lowest	170 % more than the lowest	154 % more than the lowest

Source: Gazette of India, different years

N.B.-Figures in the brackets denote increase of royalty by number of times over that of the respective grade of coal in 1971

Central law of 1948 had made provision for revision of royalty in two years and 1957 Law for revision in four years, which was in 1986 reduced to three years. The coal royalty revision was not done for 23 years (From 1948 till 1971) in the first instance; six years in second instance (1957 till 1981); ten years in third instance (1981 till 1991); seven years in fourth instance (1994 till 2002) and finally five years have elapsed since the last revision of 2002. Central government does not wake up. These irregularities in revision of royalty confirms about the casual and careless attitude of the central government.

It has been earlier discussed that West Bengal is collecting 25 percent cess on mineral price at present in addition to the benefit of old rates of royalty on minerals of 05.05.1987 and royalty in coal of 01.08.1991. Prior to 1998 West Bengal government was collecting 45 % cess on minerals. Why this discrimination?

Singreni Coal Company Ltd. (SCCL) of Andhra Pradesh is a joint venture government company of Andhra Pradesh Government and government of India, the former having 51 percent and the later 49 percent of the shares. With 12 open cast and 54 underground mines, the company has 66 active mines at present producing about 32 million tonnes of coal of 'D', 'E', 'F', and 'G' grade coals. Royalty for all grades of coal is decided at Rs. 90/- per tonne. When grade wise royalty has been decided for other coal producing states, a single rate of Rs. 90/- per tonne has been prescribed for Andhra Pradesh Coal. Why is such discrimination? Besides, SCCL charges Rs. 216.76 extra per tonne over and above the notified prices produced from OC-II mine of Ramagundem. Five percent Additional price and Sales Tax is there on for unlimited customers for all grades of coal. When coal is loaded to Indian Railway Services or into the purchasers own system, additional charges of Rs. 25/- per tonne will be levied. Are these facilities available to other coal companies?? If not, then why such discrimination??

SCCL is in Andhra Pradesh and practically controlled by Andhra Pradesh Government. The production at present is between 32-34 million tonnes. Main consumers of Singreni coal are utility and captive Power Plants, Heavy Water Plant and Cement Industries. From 1997-98 the company is running on profit. **Total manpower on roll is more than one lakh.** MCL is located in Orissa and a government of India Company as a subsidiary of CIL. From the beginning of the company it has been running on good profit. During 2005-06, MCL has produced more than 70 million tonnes of coal, yet employment in coal sector is only **seventeen thousand.** Besides royalty to Andhra Pradesh Government, SCCL also pays dividends to Andhra Pradesh government, as a major shareholder of the company.

Lignite is not coal. Some say it is a baby coal. It is lumpy and water content is as high as 48%. It is highly combustible, if exposed to air for a fortnight, it catches fire on its own. The UHV (Useful Heat Value) of lignite is less than 13000 Kilos cal/kg of coal). It is chiefly located in Tamilnadu (87%). In Rajasthan and Gujarat small reserves are discovered of 7% and 5% of the total Lignite reserves respectively. Lignite is the second stage of transformation of wood into coal formed due to bio-decay of vegetations, metamorphism and other geological processes over thousands of ears. The first stage is peat and coal is the third stage of the transformation. Popularly Lignite is known as Brown Coal. Though exploration of Lignite was started before Second World War by Madras Government, Government of India took over the project in 1955 and the company, Neyveli Lignite Corporation was established as a government of India Undertaking at Neyveli, Madras on the 14th

November, 1996-the birth day of Pandit Jawaharlal Nehru, the first and charismatic Prime Minister of India.

Table-XII: Price of ‘E’, ‘F’ and ‘G’ Grade Coals Before and After 1st January 2000 (Rs/tonne)

Grade	Non Long flame	Non-cooking Coal	
Bharat Cooking Coal Ltd. (BCCL)			
	31.05.99	15.06.04	
E	445	650	
F	355	520	
G	254	370	
Eastern Coalfield LTD (ECL) Raniganj			
E	445	770	
F	355	570	
G	254	380	
Central Coalfield LTD (CCL)			
	05.01.99	15.06.04	
E	445	650	
F	355	520	
G	254	370	
Western Coalfield LTD (WCL)			
	31.05.99	15.06.04	
E	665	900	
F	554	710	
G	418	540	
South Eastern Coalfield Ltd. (SECL)			
	31.05.99	15.06.04	
E	445	600	
F	355	470	
G	254	350	
Mahanadi Coalfield Ltd. (MCL)			
	05.01.99	15.06.04	07.08.05
E	445	510	551
F	355	400	441
G	254	290	--
Singreni Coalfields Ltd			
	19.09.99	10.04.01	March 2004
E	741	778	944 (Average)
F	618	649	of all grades
G	465	479	available
<i>Source: Parliament papers, different years</i>			

The corporation produces 18-20 million tonnes of Lignite per annum. The product profile of NLC includes, Mining of Lignite, Poser generation, production of Urea and Coke. Despite the fact that the calorific value of Lignite is very low, royalty rate was increased for Rs. 2.50 per tonne to Rs. 50/- per tonne whereas royalty of 'F' and 'G' grade was increased from Rs. 50/- per tonne to Rs. 65/- per tonne in 2002. Further more the sale price of Lignite is around Rs. 850 per tonne which is more than one and half times of the sale price of 'E' grade coal and twice that of 'F' grade coal of MCL. Given 18-20 lakh tonnes of Lignite per year NLC employs more than twenty thousand persons, whereas employment position of MCL in Orissa employs 17-18 thousand persons for 705 lakh tonnes (nearly 40 times of NLC) of coal production during 2005-06. In addition to the payment of royalty to Tamil Nadu government, NLC looks after many welfare measures of the surrounding village around twenty kms radius like medical benefits; provision of potable drinking water, educational facilities, sinking of bore wells, vocational training for rural youth and diverting water from mining areas for irrigation the rural areas.

PRICING OF COAL

Government of India deregulated the prices of non-coking coal of grades A, B and C, cooking coal and semi cooking on 22 March 1996.

Subsequently, on 12th February 1997, government of India deregulated the prices of non-cooking coal of grade 'D', and also allowed CIL to fix coal prices for grades 'E', 'F' and 'G' till January 2000 once in every six months. Instead of depending on the escalation formula contained in the 1987 report of the Bureau of Industrial Costs and Prices (BICP). CIL/subsidiaries were free to fix the prices of all the grades, groups and varieties of coal from time to time with effect from 1st January 2000. Thus, coal companies were said to be liberalised and market (free) era partially from 22nd March 1996 and ultimately in full scale from 1st January 2000. Prior to the advent of market regime, all types of coal were being sold at the same price at pit mouth throughout the country except those of SCCL. For SCCL was outside the purview of CIL.

Wide price variations among different coal companies after the liberalisation of coal pricing system suggests there is something wrong somewhere in price fixation. Whether it is free market or man-manipulated market that decides the price deserves to be proved seriously and objectively. Even during regulated regime Singreni coal price was always much higher than coal companies when quality wise Singreni stood no better and within CIL's own domain WCL has also been getting higher prices for all the grades of coal. These decisions raise serious doubt about the sagacity of the regulating authority. It is indicative of the fact that the needle of suspicious points towards those who hold rein of power. Every customer wants that price should be kept low; whereas the desire of the producer is always to see that if the quality parity exists, the price parity at least should be

maintained. It has been decided to levy sales tax @ 4 % on every mineral sold. By keeping the price of coal Rs. 200 to Rs. 500 lower than same grade of coal of other coal companies, the government of Orissa is losing more than Rs. 100 crore per annum. This particular area deserves deep analysis and correction. Running of mine price parity should be maintained for each of the grades of run of mine coal. State should resist the practice of selling its wealth at unreasonably throwaway price.

Revised Coal Royalty in 2007

Recently coal royalty was revised with effect from 1st August 2007, which is presented in *Table*

XIII. Around 92 % of coal extraction in Orissa i.e. MCL is 'F' grade coal. Revision of royalty during 2002 for 'F' grade coal was Rs. 65 per tonne while in the recent revision of August 2007 for 'F' grade coal is Rs. 55 plus 5 % of PMU per tonne (mixed one at current prices) the royalty has been fixed at Rs. 75. It reflects an increment of 15.4 percent compared to the revision of royalty in 2002 for 'F' grade coal, which is relevant for Orissa. It is worth mentioning that, the royalty for the same grade of coal for Uttar Pradesh, Chhatisgarh/Madhya Pradesh, Andhra Pradesh and Maharashtra are Rs. 79.0, 78.50, 89.05 and 90.5 respectively. Whereas West Bengal is getting Rs. 174 per tonne as revenue from coal, which is the highest in comparison to the above-mentioned states.

Recent estimate showed that Orissa is extracting more than 70 million tonnes of coal per year, which comprises of more than 6.5 million tonnes of 'F' grade coal. Surprisingly, though the quality of lignite is much lower than the 'F' grade coal still its value is Rs. 700 per tonne in comparison to the value of 'F' grade coal, which is Rs. 400 per tonne at present.

Keeping in view the quantum of 'F' grade coal in Orissa, the state will suffer a loss of around Rs. 90 crore in comparison to the rate of A.P, Rs. 40 crore in comparison to the rate of Jharkhand, Rs. 20 crore in comparison to the rate of Chhattisgarh and MP and Rs. 650 crore of revenues per annum in comparison to the revenue from coal in West Bengal. Obviously, the cause of Orissa has been neglected by the central authority may be due to lack of proper presentation by the state government of Orissa.

Table XIII: Revised Coal Royalty w.e.f 1-8-2007

Sl. No	Coal Companies	PMV for 'F' Grade Coal (Rs. Per tonne)	Royalty per tonne (w.e.f. 01.08.2007)	Previous rate of royalty of 'F' Grade coal	Percentage increment (royalty)
1.	Singreni Coalfields Ltd. (ACCL, Andhra Pradesh)	681	89.05	65.0	37
2.	Central Coalfields Ltd. (Jharkhanda)	520	81.0		24.6
3	South Eastern Coalfields Ltd. (SECL, Chhatishgarh and MP)	470	78.5		20.8
4	Mahanadi Coalfields Ltd. (MCL, Orissa)	400	75.0		15.4
5	Northern Coalfields Ltd. (NCL, Uttar Pradesh)	480	79.0		21.5
6	Western Coalfields Ltd. (WCL, Maharastra)	710	90.5		39.2
7	Eastern Coalfields Ltd. (ECL, West Bengal)	580	174.0	30 percent increment in coal royalty per tonne (includes all cesses and coal royalty)	unchanged

Source: Again Coal Royalty: published in 29th Aug 2007, The Samaj, An Oriya article of Shri Trilochan Kanungo

CHAPTER IV

A REVIEW OF HODA COMMITTEE REPORT

It was noticed during the decade of post liberalization period that the mining sector could not yield encouraging result. It was observed by the Planning Commission that the main factors responsible for this were procedural delays in the processing of applications for mineral concessions and the absence of adequate infrastructure in the mining areas. To tackle the issues relating to the development of mineral sector and suggest measures for improving the investment climate the Planning Commission constituted a High Level Committee on 14th September 2005 under the Chairmanship of Anwarlal Hoda. The main objective of the committee was to prepare a National Mineral Policy considering the views of mineral rich states and states not well endowed with mineral reserves. The Committee finalized the recommendations on 30th June 2006 and the report was submitted on 19th July 2006, which was released to the public for information on 22nd December 2006.

The issue of value addition and captive mining taken up by the committee in Chapter 5 and the problem of augmenting state revenues discussed in Chapter 6 are vital for the mineral rich states like Orissa. The value addition requirement is imposed by the state governments because they want the concession holder to ensure the industrial unit that uses the mineral from the allocated mine is set up within the boundaries of the state in which the mine is located. There is no such location specificity in case of captive mining. The argument in favour of the requirement of value addition arises because the minerals belong to the state in which they occur and the mineral rich states are relatively poor and less industrialised than others. Naturally the poor but mineral rich states would like to maximise the economic return from their resources by using mineral concessions as a tool for attracting industry. For many years, states have been competing with each other for attracting industry by granting various incentives, mainly in the form of sales tax concessions. With the introduction of Value Added Tax (VAT), the sales tax exemption option is closed and the states are bound to give mineral concessions especially to the Mining Lease holders for exploring proven ore bodies to attract industrial units in the state. Another important argument in favour of value addition within the state is that mineral owning states need to find a way in which they can increase their financial resources from the exploitation of minerals because the royalty paid is very meagre. Downstream it not only generates additional economic activity but also widens the base for collection of taxes.

The main recommendations of the Hoda Committee, which relate to the interest of mineral rich states like Orissa can be summarised as follows:

- In line with the current economic policy, in future the core functions of the state in mining will be facilitation of exploration and mining activities of the investors as well as entrepreneurs, provision of infrastructure and regulation and tax collection. Where it deemed necessary for the state to continue in mining activities, there shall be arm's length between state agencies that explore. There shall be transparency in the allocation of ore bodies for mining.
- Induction of foreign technology and foreign participation in exploration and mining shall be encouraged.
- For the improvement of infrastructure facilities public-private arrangements should be made. For infrastructure financing each state with major mining activity should set up MDF by earmarking 15 percent out of the annual collections of royalty for the fund. The Government of India should also make matching contribution to the MDF of each state of an equal amount from the plan funds, for the duration of the Eleventh Plan.
- Value Addition should be the guiding principles in giving preference to applicants.
- The method of fixation of rates of royalty should move forward decisively on the basis of ad-volorem rates. In considering the raising of the ad-volorem rates further, the rates prevailing in Western Australia would be taken into consideration as a point of reference.
- The valuation of mineral for the purpose of royalty should be based on the transaction value and should include the profit element over and above the unit cost of production. The rates of dead rent should be rationalised so that they act as an effective deterrent against a mine owner who does not undertake mining as per the approved mining plan and prefers to keep the mineral resources as undeveloped. In other words an escalating scale of dead rent should be worked out.
- In the light of assessment regarding availability of iron ore resources in relation to current domestic production and the appraisal of the impact of export controls on the health of mining industry and its attractiveness for investment, the committee has concluded that there is no need to impose any quantitative restrictions on exports. But the position should be revised after 10 years. However, by way of abundant precaution the committee recommends that an export duty may be levied on exports of iron ore in lump form with iron content above 65 percent. The system of licensing and canalisation currently in operation should be discontinued.

Issues of Disputes:

The issues of disputes mainly relate to the authority and interference of Central Government regarding procedure for granting mineral concessions. The mineral rich state governments disagree with the recommendations that proposed to give jurisdiction to the Central Government to entertain application from the aggrieved parties and take a final decision thereon in the event of failure of state governments to take decision on mineral concession application within the prescribed time limits. The states being the owner of minerals, transfer of original jurisdiction of states to the central government is not acceptable. The issue is sensitive to the centre- state relationship.

The Committee recommends solving the problem of delays by the Joint Committee represented by the state and Central Government. While strongly expressing that the provisions of the existing MMDR Act, 1957 have taken away the constitutional authorities of the mineral producing states. Further, the discontinuation of the existing system of licensing and conditions in case of iron ore and withdrawal of quantitative restriction on exporting iron ore is unacceptable.

CHAPTER V

CONCLUSION

The central government has misused the power conferred on it by the Mines and Minerals (Development and Regulation) Act, 1957 for over fifty odd years after the independence. The constitution of India has conferred on the central government by entry No.54 under the Union List (List-1) of the Seventh Schedule as follows:

Entry 54: Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

The same Seventh Schedule of the constitution of India has also conferred on the state under List-II (State List) in entries 23, 49 and 54 they read as under:

Entry 23: Regulation of mines and mineral development subject to the provision of List-I with respect to regulation and development under the control of the Union.

Entry 49: Taxes on lands and buildings

Entry 50 Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

Entry 23 of List II has made it candidly clear that state ought to act in harmony with and under the control of the Central government so far as regulation of mines and mineral development are concerned.

Entry 50 while conferring power on the state to legislate law relating to taxes on minerals related to mineral development come into question. The MM (DR) Act, 1957 (Originally MMRD Act, 1957) was enacted and passed by the entry 50 of List II redundant.

The question before us is whether the imposition of royalty under a Central legislation i.e. Mines and Minerals (Regulation and Development) Act, 1957 is constitutionally valid and secondly whether declaration of royalty by the Union government has denude the power of the state legislatures to impose 'tax on mineral rights' as cess or in any other name which is their original jurisdiction under entry 50 read with 45 and 49 of List II of the Seventh Schedule.

There is no provision elsewhere in the constitution empowering the Union Government to declare the rate or royalty or tax or levy on minerals or by any other name.

1. Parliament has no legislative competence to enact Section 9 and Second Schedule of the Mines and Minerals (Regulation and Development) Act, 1957
2. Section 9 and Second Schedule are colourable legislation
3. These provisions have rendered the express provisions of Entries 49 and 50 of List II of the Seventh Schedule of the constitution redundant.
4. The said provisions have rendered the express provisions of Entries 49 and 50 of List II of the Seventh Schedule of the constitution redundant.
5. Federalism-one of the basic principles of the constitution of India has been violated
6. These provisions of 9 and the Second Schedule of the Act is severable. It stands the test of severability.

Here following the discussion, entry 54 of the Union List (List I) empowers the Parliament to frame laws with respect to “Regulation of Mines and Mineral Development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest”

There is no express provision as to imposition of royalty or any other tax for the purpose. The extent of law by Parliament is thus desired up to making provision for the Union government to control the regulation of mines and development of minerals. It also cannot be extended by implication that Parliament can frame law in imposing taxes or royalty by Union government for, under the doctrine of implied powers.

“The doctrine of implied power can be invoked where without the said power the material provision of the Act would become impossible of enforcement”

A.I.R. , 1962 S.C. 486, 496 Bidi Bidi etc. Association vs. State of Bombay

“In the interpretation of the statues levying taxes it is the established rule not to extend their provision by implication beyond the clear import of the language used or to enlarge their operations so as to embrace matters not specifically pointed out”.

Gould Vrs. Gould, U.S., 1917

On the other hand there is explicit provision under entry 50 of State List (List II) declaring the jurisdiction of the State Legislature to enact law with respect to taxes on mineral rights subject (however) to any limitation imposed by Parliament by law relating to mineral development. This calls upon to invoke the doctrine of Implied Prohibition on maxim 'expressio unius exclusion atheris' i.e. the express mention of one thing implied the exclusion of another.

The question now arises as to whether without the provision of Section 9 read with Section 2 of MMRD Act 1957 would render the law absurd and inoperative. An analysis of the Act after fifty years of operation and a plain analysis of the various provisions of the said MMRD Act 1957 reveals that the Union government without the power to declare the rate or royalty under Section 9 would have the same control as regards the regulation on minerals and development of mines. Therefore the provision under Section 9 of MMRD Act 1957 can be construed as a clear case of colourable legislation by the Parliament.

Doctrine of Colourable Legislation:

“The doctrine of colourable legislation implies that though a legislature is not fettered in the sphere of its power it cannot under the guise of the pretence or in the form of an exercise of its own powers, carry out an object which is beyond its powers, or trespass on the exclusive powers of the others”. A.G. for Alberta Vs. A.G. for Canada 1939 P.C. 53

“If the constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries or if there are limitation on the Legislative authority in the shape of fundamental rights, questions do arise as to whether if Legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements.

Gajapati Narayan Deo Vs. State of Orissa 1953 S.C. 375, Bhairabendra Vs. State of Assam A.I.R. 1956 S.C. 503, 512.

The section 9 of MMRD Act 1957 has made provision in the Act to specify in the Second Schedule of the Acts the rates of royalty for various minerals and empowered the Central government to notify in the official Gazette the amendment of Second Schedule so as to enhance or reduce the rate at which, royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notifications. Declaration of such jurisdiction of the Parliament and Power of the

Central government was not with a view to regulating and developing the minerals and mines but to arrive at some kind of 'Uniformity and Coordination' in matters of royalty which is not the express provision of the entry 54 of List I.

Why and how states are not being taken into confidence in matters of conservation and development of minerals? How and why it is presumed that centre would serve national cause better than the constituent states? What after all are the bases of the Centre? No doubt in matters like defence and national security the Centre should be endowed with all power and authority to deal effectively. In matters of foreign relation, macro economic policies, currency and monetary policies, the Centre should have unfettered jurisdiction.

'Cess' as conceived in 'Orissa Cess' Act, 1962 is not a 'fee' within the meaning of entry 66 of List II for it has not been envisaged for any specific purpose or specific area. It is a 'tax' just as 'Income Tax' Under Article 270 of the constitution of India, a tax levied and collected by the Union and distributed from the 'Central divisible pool' among the states in the prescribed manner. 'Cess' in the state of Orissa is levied and collected by the state to be distributed among Zilla Parishads, Panchayat Samities and Gram Panchayats in the ration of 5:8:12 as desired in the statement of objects and reasons of the Orissa State Cess Act, 1962.

The framers of the constitution to render any other entry of the same list or the other redundant have constructed no entry of either of the lists of the Seventh Schedule of Constitution of India. The Supreme Court has also held in *India Cement* that entries should not be so constructed as to make any one entry redundant.

While conceding that the widest possible amplitude ought to be given in interpreting the entries, utmost care should also be paid to do so within the meanings of the express words and language. No alien intention should be imported while framing laws under the entries, which do not fall within the jurisdiction of the law-making body.

The lists are thus designed to define and delimit the respective areas of respective competence of the Union and states. No range can be contemplated within which the Parliament has the competence under the entry 54 of List I to specify the rates of royalty on various minerals and the Union government has acquired amendment of rates of royalty unilaterally in absence of any express provision or implied power, while the state Legislatures have been endowed with express authority under entry 50 of List II to do so. The question of competence of each of the legislatures is of paramount consideration in enacting laws. Entry 54 of List I cannot be denude the authority of the state Legislatures to enact law with respect to tax on minerals. Any such provision of Central law under the pretence of a particular entry of that particular List without caring for the existence of the

express language of the entry of the other List in our opinion is voidable. Section 9 of MMRD Act, 1957 which is purported to have denuded the authority of the state Legislatures which, on the other hand, have exclusive power to impose tax on minerals is thus ultra vires.

In Tulloch the honourable Supreme Court held: “if a competent Legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislatures whether passed before or after would be overborne on the ground of repugnance. Where such is the position, the inconsistency is demonstrated not by a detailed comparison of provisions of the two statutes but by the mere existence of the two places of legislation.

State of Orissa Vrs. M.I. Tulloch & Co. A.I.R. 1964 S.C. 1292.

Neither of the Legislature –Parliament or the State Legislature is endowed with superior efficacy in our constitution. Each has its own law-making jurisdiction. Neither of the legislatures has the authority of constitutional power to review or supersede the law enacted by the other. In state (List II), some limitation, are explicitly mentioned in some of the entries of the list. But such limitations do not denude the state Legislature of its competency to legislate, they only define the conditionalities. None is subservient to other.

In concurrent list (List III) both the Parliament and the state Legislature have derived the authority to legislate with respect to the matters enumerated in each of entries and it has been held up.

“The very fact that a particular subject is in the Concurrent List means that both Parliament and the state Legislatures are entitled to legislate with regard to that subject. Therefore Parliament can not exclude or oust the jurisdiction of the state Legislature by legislating on any particular subject. The Indian constitutions clearly recognises the right of both Parliament and the State Legislatures to legislate concurrently with regard to a subject mentioned in the concurrent list and therefore the doctrine of repugnancy to be applied in India is not so stringent as would be applied in other countries where constitutional provision is different. The repugnancy that has got to be found is the repugnancy in the actual provisions of the two laws and not with respect to their subject matter of the two laws. The proper test is whether effect can be given to the provisions of both the laws and whether both the laws can stand together. If effect can both be given to both the laws and both the laws cannot stand together, then the law made by parliament must prevail as against the law made by the state Legislature.

State Vrs. Zeverbhai AIR 1953, Bombay 171

Parliament has however power to legislate law with respect to matters enumerated in State List under extraordinary situation under Article 249, 250, 252 and 253. this is a temporary and emergency arrangement meant in greater national interest. Power of the state Legislatures to enact law with respect to matters enumerated in entries under List II (state list) is without doubt plenary. Unlike the judiciary in India, where the Supreme Court has been endowed with superior power and is the highest guiding court in the country; the two legislatures are not conceived in the similar manner.

The law making power of the Parliament is extended with respect to imposition of tax in areas not mentioned in the State List and concurrent list under Article 248 (2) of the constitution. Where express provisions are enumerated in the State List, the Parliament thus is denuded of its competence to legislature any law imposing tax-whatever might be the name.

Section 9 of Mines and Minerals (Regulation and Development) Act 1957 wherein Parliament has specified the rate or royalty of minerals in the Second Schedule of the Act and Union government is endowed with the powers to notify in the official Gazette the subsequent changes in royalty is unambiguously against the very federalism or our constitution by trespassing into the explicitly defined area of the State List in entry 49 and 50.

In the epoch making *Keshabananda Bharati*, the Honourable Supreme Court has held that the Parliament, being endowed with the amending powers, cannot however after or otherwise affect the Basic Features of the Constitution. Basic structures as enumerated by the Supreme Court are:-

1. Supremacy of the Constitution,
2. Republican and Democratic forms of Government.
3. Secular character of the Constitution,
4. Separation of powers between the legislature, the executive and the judiciary.
5. Federal Character of the constitution.

About the federalism the Supreme Court has opined in this historical decision, “Our constitution is federal in character and not unitary. In a federal structure and existence of both Union and the states is indispensable and so is the power of judicial review”.

Quoting *Decay (Law of the Constitution)* the court further says, “A federal state derives its existence from the constitution, just as a corporation derives its existence from the grant by which it is created. Hence every power, executive, legislative or judiciary whether it belongs to the nation or the individual state, is subordinate to and controlled by the constitution”.

“The object for which a federal state is formed involves a division of authority between the national government and the separate states. Federalism can flourish only among communities imbued with a legal spirit rained to reverence the law”.

All constitutional amendments, let alone ordinary laws made there under are required to be tested on the touch-stone of basic features of the Constitution. Any attempt to abrogate the constitutional authority of the state Legislature is therefore unconstitutional. The ‘Vires’ of Section 9 of MMRD Act, 1957 to declare rate or royalty on minerals by Union government deserve judicial scrutiny by the highest court within the broad philosophy of basic feature of the constitution i.e. federalism.

Section 9 of MMRD Act, 1957 is no doubt a legislation by the Parliament in excess of its constitutional jurisdiction. Subsequent amendment of the said provision and subsequent actions of the Union government has only stood testimony to the above contention.

Less an idea might be nurtured that taxation (Levy of royalty) power as enshrined in Section 9 of Mines and Minerals (Regulations and Development) Act, 1957 is the soul of the Act, it deserves mention and emphasis here that even the non-forest activities like mining, industry, power and other developmental projects adversely affecting the conservation and preservation of forests are being effectively regulated and controlled under the provision of the Forest (conservation) Act, 1980- a Central Law without taking resort to taxation proposal. The regulating authority is not the state government, but the government of India who acts on the advice of an Advisory Committee of experts constituted for scrutinising the proposals.

The provision of the Forest (conservation) Act, 1980 in so far as they relate to mining projects are as follows.

Since mining, including underground mining is a non-forest activity prior approval of the central government is essential before a mining lease is granted in respect of a forest area. The Act would apply not only to the surface area, which is used in the mining, but also to the entire underground mining area below the forest.

Boulders, Bajri, Stone, and Sand etc., which are found in the riverbeds located within forest, would constitute a part of the forestland and their removal would require prior approval of the Central government.

Renewal of the existing mining lease in a forest area also requires the prior approval of central government. Any renewal of the lease or any working permission in respect of any forestland which

has already broken or worked for mining will also require prior approval of the central government under the Act, as per recent opinion of the Attorney General.

Prior approval of the central government is required for resumption of mining operation on the expiry of a mining lease. Some projects involve use of forestland as well as non-forest land. In such projects, work should not be started on non-forest land till the approval of the central government for release of forest land has been given so that any expenditure incurred on works on non-forest land may not prove to be in fructuous if diversion of forest land involved is not subsequently approved under the Forest (Conservation) Act.

The Act provides only for prior approval; so there is no scope for entertaining any proposal for ex-post-facto approval. All cases where the Act has been violated by way of continuation of the mining activities on forestland are to be rejected. All mining activities on forestland are to be rejected.

All mining projects require clearance from environmental angle and these proposals should be referred to the Environment wing of the Department of Environment and Forest of government of India simultaneously with the proposal for forest clearance.

Mineral Conservation and Development Rules, 1988 under MMRD Act, 1957 substitution MCDR, 1958 has provisions for preservation, protection and restoration of environment. There are also provisions for development and conservation of minerals.

The intention in mentioning the above provisions is to bring a comparison between the regulating provisions under the Forest (Conservation) Act, 1980 and MMRD Act, 1957 with respect to mining projects. The former without taxation provision and the latter with it. Surely the provisions of the Forest (Conservation) Act, 1980 is equally effective, it not more. Prospecting licences and mining leases are thus controlled by both the Acts and Rules made there under.

Even under section 19 of MMRD Act, 1957 prospecting licence in mining lease granted, renewed or acquired in contravention of the provisions of the Act (MMRD Act, 1957) or any rules made there under Section 21 of the effects. Penal provisions under Section 21 of the act are also there for contravention of any provision of the Act or the rules. Without taxation proposal as under Section 9 of the act, the rest of the provisions of MMRD Act, 1957 are no doubt adequate for regulation of minerals and development of mines.

Now applying the doctrine of severability, it can be safely concluded that by omitting Section 9 of the Second Schedule from MMRD Act, 1957, the rest of the enactment is workable, and does not frustrate the intention of the Parliament, so far as regulations of mines and minerals development

are concerned, and is quite independent of the omitted portion. The rest of the provisions of the enactment (MMRD) Act, 1957 are complete in themselves and are not truncated by excision of Section 9 and the Second Schedule.

Some discover virtues in uniform rate of royalty, so as not to have adverse effect on the prices of the end-products in the internal market and also on the competitiveness of our minerals in the export trade. Are our prices inflation-free and mineral exports encouraging with the existing price or uniform royalty? Even now, grades of minerals are many and prices are numerous. They are either administered or controlled. Uniformity in rates of royalty, however, can be achieved by regular consultation and consensus rather than unconstitutional imposition from above. Any arbitrary action by any of the states would only adversely affect the mineral-business of the state concerned, and in the process the state would lose the pie it fights for. Trust and confidence grows with the consultation and consensus among federated states.

Until such amendment is brought about in MM (DR) Act, 1957 the central government should

1. Revise regularly rate of royalty every two years as suggested by Justice Sarkaria in Centre-state Relation Commission Report 1988
2. Rate of royalty on all minerals in the second Schedule of the MM (DR) Act, 1957 should be decided on ad-volorem basis- on the basis of run of mine price and not otherwise.

Out of 51 items in the revision of Second Schedule for non-coal minerals 12.09.2000 notification GSR No. 713 (E) and for coal GSR 572 (E) Dated 16.08.02 and for sand stowing GSR 214 (E) Dated 11.04.1997, royalty rates for 29 items have been notified directly on ad-volorem basis; 8 items on London Metal Exchange and London Bullion Market Association commonly known as London price and 14 on tonnage basis are fixed. Only for one item the rate has been fixed at twenty percent of sale price.

On October 14th 2004, royalty rates for non-coal minerals have been revised. Out of 51 items royalty for same 14 nos of minerals have been revised on tonnage basis.

3. Not less than twenty-five percent of run of mine price on ad-volorem should be fixed for each of the minerals-not on London price.
4. State should be delegated the power to collect five percent 'Cess' on the sale value of the sold/deem to have been sold minerals for Local Area Development Purposes within twenty kilometres of the operating mines.

5. Regarding coal price, a joint expert committee consisting of state officers and officers of the coal company should sit to decide from time to time.
6. From minerals exported the state receives no sale tax. In the interest of the mineral exporting states Sales Tax/ Mineral handling fees @ 5 percent should be charged.

If the above recommendations are accepted by the Central Government, Orissa government shall get additional revenue of Rs. 1500 crore per annum from minerals.

7. In the VAT regime sales Tax on minerals @ 4 percent be replaced by a middle path.

Enough injustice has been meted out to the state like Orissa. Central government should appreciate it and act promptly. The nation lives healthier by her healthy limbs. States are her limbs. It should be judiciously facilitated for harmonious growth of all the federated units. Federalism grows stronger with mutual understanding and harmonious functioning. Both the states and the centre ought to act strongly and surely with mutual trust and co-operation.

CYSD - An Overview

Centre for Youth and Social Development (CYSD) is a more than two-decade old non-profit development organization, working to improve that lives of tribal, rural and urban poor in Orissa; helping the communities to identify and initiate development measures; providing training and other capacity-building support to pro-poor organizations and individuals; and carrying out research and advocacy in favor of the poor constitute the major initiatives of the centre.

Community empowerment, livelihood promotion, local self-governance, micro-finance and entrepreneurship development, primary education, gender equity, disaster preparedness and organization development are among the centre's major concerns.

CYSD reaches out to 47,285 poor families and over 900 development organizations spread across 538 villages and seven slums in ten districts of the state. While three of its tribal development projects are located in the remote districts of Koraput, Sundargarh, Keonjhar and Mayurbhanj, a rural development project and an urban development project are located at Choudwar Mangarajpur near Cuttack and in the urban slums of Bhubaneswar respectively.

The centre is part of several global alliances including Social Watch, Transparency international and CIVICUS, working to strengthen citizenry and civil society action across the world.

This exploratory monograph examines the state's vast untapped potential earning from mining revenues and identify the possible alternative opportunities of resource generation based upon optimum utilization of existing resources. It tries to capture the mineral potential in Orissa and the ways in which it has been benefiting the state in creating employment opportunities as well as adding to the state's revenue basket. National policy environment with regard to the minerals has been discussed to highlight the policy deficits. The problems of Orissa vis-a-vis the mineral rich states are discussed at length and suggestions have been made to come out with a ' level playing field ' among the mineral rich states of India.



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