

वी. किशोर चन्द्र देव
V. KISHORE CHANDRA DEO



जनजातीय कार्य एवं पंचायती राज,
भारत सरकार
शास्त्री भवन, नई दिल्ली-110115
MINISTER OF TRIBAL AFFAIRS
AND PANCHAYTI RAJ
GOVERNMENT OF INDIA
SHASTRI BHAWAN, NEW DELHI-110115

I would like to draw your attention to the alarming situations in the V Scheduled Areas of Visakhapatnam District. Governance for all practical purposes been marred by the upsurge of Extremist activities and this entire belt has become the hotbed of Maoist activities. There is hardly any peace in this area as the entire region has been trembling under the fear of Sporadic Assaults and ruthless killings which have taken their toll even on our security forces.

This entire region is located on the borders of Odisha state and is referred to as AOB which is the Andhra Odisha Border. This geographical area falls within my Lok Sabha Constituency. I have been meeting people belonging to various communities and locations that have been affected and am of the considered view that in the present unprecedented situation, certain extraordinary measures will have to be initiated immediately to ensure that the prevailing conditions do not become irreversible.

The Extremists' had migrated to Odisha and Chattishgarh for various reasons. But unfortunately during the last 5years they have slowly regrouped themselves, by gaining the sympathy of the local people only due to the threat of Bauxite mining in Visakhapatnam District. They are utilizing our side of the border for recruiting and training new cadre and for storing their ammunitions and explosives in dumps located in the heart of in accessible dense forests.

Contd.....

It is necessary to note that most of the killings by the Extremists are in connection with those who are said to have had close links with the Bauxite mining lobbies and their agents.

I would like to bring to your notice certain blatant violations of our constitutional provisions. Your Excellency is fully aware of the facts that the Alienation of Land Transfer Regulation (ALTR Act) to protect the rights of the people belonging to Scheduled Tribes within the Scheduled V Areas. The provisions of the said act strictly prohibit a non Tribal i.e. a person or persons who do not belong to Scheduled Tribe, either from purchasing any land or even from getting a lease within the Scheduled Areas.

Between the years 2005 and 2010 the government of Andhra Pradesh had signed MOU's with several companies which are neither owned nor controlled by people belonging to Scheduled Tribes. This was further compounded when the then government of A.P recommended 13 more applications infavour of A.P Mining Development Corporation for prior approval of mining lease. It may be noted here that APMDC is not an organization or undertaking that either belongs to or is controlled by Scheduled Tribe communities. These decisions of the then Chief Minister not only betrays our commitment for the cause of people ^{who} belong to the Scheduled Tribe community but also amounts to a flagrant violation and affront of our constitutional provisions.

Article 244(i) provides that Scheduled Areas^a of a state shall be administered in accordance of the Vth Schedule of our constitution. This provision emerges from the Excluded and Partially Excluded areas as envisaged under the Government of India Act 1935. The schedule V clearly states that the executive powers of the union shall extend to giving directions to the state regarding administration of the Scheduled Areas.(Para 3),

creating a categorical exception to Article 73 (extent of executive power of the Union) and Article 162 (Extent of executive power of the State).

Para V begins with the non-obstante clause, namely that the provisions it contains are applicable "notwithstanding any thing in the constitution..."

It is, therefore, explicit that the special powers of the Governor with regards to Schedule Areas as provided in Para V over rides other provisions of the constitution such as Article 163, Article 73, Article 62 etc. Thus the powers of the Governor to direct that any act of Parliament or State legislature shall not apply to a Scheduled Area.

Para V(ii) further empowers the Governor to make regulations for the peace and good government of a state or a part thereof including regulations relating to Land Alienation and Transfer Allotment of Land, and money lending.

Para V(iii) removes any confusion by stating that for this purpose the Governor can repeal or amend any Central or State legislation or any existing law applicable to such area.

This key paragraph of the Vth schedule clearly vests an independent legislative authority on the Governor, which is wide and plenary. It is important to note that this power of the Governor to make regulations for the 'Peace and Good Government' of a Schedule Area (or part thereof) is not restricted to any entry or entries of the legislature lists in the VII Schedule Areas but covers a wide area of subjects which could conceivably fall under the category of Peace and Good Government.

Her Excellency the President of India had during the Governors' conference held on 16, 17 of September 2008 observed that there was a need for an authoritative legal opinion with respect to the powers of the Governor under Vth schedule. The matter has since been examined by the Ministry of Tribal Affairs in consultation with Ministry of Law and Justice. The Attorney General of India has opined that "*In performance of the functions*

4

and exercise of the powers under the V schedule, the Governor's not bound by the aid and advice of the council of the Ministers of state" Provisions of Article 244(i) and 244(ii) which provide for the administration of the Schedule Areas within a state in accordance with the Vth and VIth schedule, respectively emerge from the Excluded and Partially Excluded Areas as envisaged under the Government of India Act 1935.

In *Shamshar Singh Vs State of Punjab* [(1974) 2 SCC 831] a bench of seven judges of Hon'ble Supreme Court of India categorically held that certain power of the constitution require that the Governor should act in his discretion. In such circumstances the Governor is not bound by the aid and advice of the council of the Ministers. **The Hon'ble court held that "where the Governor has any discretion Governor acts on his judgment"**.

In *M.P. Special Police Establishment Vs State of M.P* [(2004) SCC 788] a constitution bench of 5 Hon'ble judges again reiterated that although the normal rule is that the Governor acts on the aid and advice of the Council of Ministers, but there are exceptions under which the Governor can act in his own discretion. The court observed that:

"The normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independent or contrary to it, but there are exceptions in which the Governor can act in his own discretion. Some of the exceptions are as set out hereinabove. It is, however, clarified that the exceptions mentioned in the judgment are not exhaustive. It is also recognized that the concept of the Governor acting in his discretion or exercising independent judgment is not alien to the Constitution. It is recognized that there may be situations where by reason of peril to democracy or democratic principles, an action may be compelled which from its nature is not amenable to ministerial advice."

In *Pu Myllai Hlychho v. State of Mizoram* [(2005) 2 SCC 92] a Constitution Bench of five Hon'ble Judges again reiterated the principles that there are certain powers in the Constitution which are to be exercised in the discretion of the Governor. The Hon'ble Court held that:

“There are several powers and duties for the Governor and some of these powers are to be exercised in his discretion and some other powers are to be exercised by him with the aid and advice of the Council of Ministers. The executive powers of the State are vested in the Governor under Article 154(1), Article 163(1) states that there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this constitution, required to exercise his functions or any of them in his discretion.”

In *Ram Kripal Bhagat Vs. State of Bihar*, [(1969) 3 SCC 471] the Hon'ble Supreme Court considered the provisions of the Fifth Schedule and observed that they were para-materia with Sections 91 and 92 of the Government of India Act, 1935 which conferred on the Governor “an utmost discretion of enactment for the containment of the objects pointed to”

In the said judgment, the Apex Court considered the background of the Fifth Schedule. The Apex Court observed that the powers conferred on the Governor under the Government of India Act, 1935 were discretionary powers. In this regard, the Court observed that:

“The Scheduled areas are dealt with by Article 244 of the constitution and the Fifth Schedule to the Constitution. Prior to the Constitution, the excluded areas were dealt with by Sections 91 and 92 of the Government of India Act, 1935. The Excluded and the partially excluded areas were areas so declared by order in Council under section 91 and under Section 92. No act of the Federal Legislature or of the Provincial Legislature was to apply to an excluded or a partially excluded area unless the Governor by public notification so directed. Sub-section (2) of Section 92 of the Government of India Act, 1935 conferred power on the Governor to make regulations for the peace and good government of any area in a Province which was an excluded or a partially excluded area and any regulations so made might repeal or amend any Act of the Federal Legislature or the Provincial Legislature or any existing Indian law which was for the time being applicable to the area in question. The extent of the legislative power of the Governor under Section 92 of the Government of India Act, 1935 in making regulations for the peace and good government of any area conferred on the governor in the words of Lord Halsbury “an utmost discretion of enactment

for the attainment of the objects pointed to". (See Riel V. Queen) in that case the words which fell for consideration by the Judicial Committee were "the power of the Parliament of Canada to make provisions for the administration, peace, order and good government of any territory not for the time being included in any province". It was contended that if any legislation differed from the provisions which in England had been made for the administration, peace, order and good government then the same could not be sustained as valid. That contention was not accepted. These words were held to embrace the widest power to legislate for the peace and good government for the area in question."

In Paragraph 22 of the judgment, the Hon'ble Apex Court considered the nature of powers exercisable under clause 5 of the Fifth Schedule. Paragraph 22 reads as follows:

"The Fifth Schedule to the Constitution consists of 7 paras and consists of Parts A,B,C and D. Para 6 in Part C deals with Scheduled Areas as the President may by order declare and there is no dispute in the present case that the Santhal Parganas falls within the Scheduled Areas. Para 5 in the Fifth Schedule deals with laws applicable to Scheduled Areas. Sub-para 2 of para 5 enacts that the Governor may make regulations for the peace and good government of any area in the State which is for the time being a Scheduled Area. Under sub-para 3 of para 5 the Governor may repeal or amend any Act of Parliament or of the legislature of the State or any existing law which is for the time being applicable to the area in question. It may be stated that a contention was advanced by counsel for the appellants that Section 92 of the Government of India Act, 1935 was still in operation and the Governor could only act under that section. This contention is utterly devoid of any substance because Section 92 of the Government of India Act, 1935 by Article 395 of the Constitution. It was contended that the power to make regulations did not confer power on the Governor to apply any law. It was said that under Section 92 of the Government of India Act, 1935 the Governor could do so but under the Fifth Schedule of the Constitution the Governor is not competent to apply laws. This argument is without any merit for the simple reason that the power to make regulations embraces the utmost power to make laws and to apply laws. Applying law to an area is making regulations which are laws. Further the power to apply laws is inherent when there is a power to repeal or amend any Act, or any existing law applicable to the area in question. The power to apply laws is really to bring into legal effect sections of an Act as if the same Act had been enacted in its entirety: Application of laws is one of the recognized forms of legislation. Law can be made by referring to a statute or by citing a statute or

by incorporating a statute or provisions or parts thereof in a piece of legislation as the law which shall apply.”

The Hon’ble Court further held that:

“the Governor had full powers to make regulations which are laws and just as Parliament can enact that a piece of legislation which applies to a particular State; similarly under Clause 5 of the Fifth Schedule, Governor can apply specified laws to a Scheduled area”.

In State of Meghalaya Vs. Ka Brhyien Kurkalang [(1972) 1 SCC 148], the Hon’ble Supreme Court, following gRam Kripal’s Case, held that the power contained in Clause 5 of the Fifth Schedule was of the widest amplitude. In this regard the Hon’ble Court held that:

“in Ram Kirpal v. Bihar this Court had the occasion of considering the provisions of the Fifth Schedule to the Constitution, and in particular its para 5(2) which empowers the Governor to “make regulations for the peace and good government of any area in a State which is for the time being a scheduled area” and which power under sub-paragraph (3) includes the power to repeal or amend, while making such a regulation. _ any Act of Parliament or of a State Legislature or any existing law which is for the time being applicable to the area in question. Explaining the content and the scope of that power, Ray. J., speaking for the Court observed at p.244 of the report that the Power contained in para 5(2) of that Schedule embraced the widest power to legislate for the peace and good government for the area in question which comprised of not only making of laws but also of selecting and applying laws, and that “the power to apply laws is inherent when there is a power to repeal or amend any Act or any existing law applicable to the area in question”.

In Samata Vs. State of A.P. [(1997) 8 SCC 191], the Hon’ble Supreme Court again considered the provisions of the Fifth Schedule. The Hon’ble Court held that the provisions of Clause 5 (2) (a) and (c) were legislative powers and Clause 5 (2) (b) comprise of legislative as well as executive powers. The Hon’ble Court also observed that the executive power of the State is subject to the legislative powers under Clause 5(1) of the Fifth Schedule. The relevant portions of the judgment in this regard read as follows:

“The executive power especially conferred by the Constitution like the pleasure tenure or the power of pardoning a convict are in our view, not apposite to the issue. The power of the executive Government in that behalf has wisely been devised in the Constitution and the law made under Article 245 read with the relevant entry in the Seventh Schedule to the Constitution

subject to the Fifth Schedule when it is applied to Scheduled Area. The power of Government to acquire, hold and dispose of the property and the making of contracts for any purpose conferred by Article 298 of the Constitution equally is coextensive with the legislative power of the Union/State. However, Article 244(1) itself specifies that provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State except the excluded areas specified therein. The legislative power in clause (1) of Article 245 equally is "subject to the provisions of the Constitution" i.e. Fifth Schedule. Clause (1) of para 5 of Part B of the Fifth Schedule applicable to Scheduled Areas, adumbrates with a non obstante clause that: "Notwithstanding anything in the Constitution, in other words, despite the power, under Article 298, the Governor may, by public notification direct that any particular Act of Parliament or of the legislature of a State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications as he may specify in the notification and any direction given under clause (1) of para 5, may be given so as to have retrospective effect. "The executive power of the State is, therefore, subject to the legislative power under clause 5(1) of the Fifth Schedule. Similarly sub-para (2) thereof empowers the Governor to make Regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. *In particular and without prejudice to the generality of the foregoing power, such Regulations may regulate the allotment of land to members of the Scheduled Tribes in such area or may prohibit or restrict the transfer of land under clause (a) by or among the members of the Scheduled Tribes in such areas. In other words sub-para 5(2)(a) and (c) legislative power and clause (b) combines both legislative as well as executive power. The word "regulation" in para 5(2) (b) is thus of wide import."*

The Hon'ble Court further held that the legislative powers of the Governor under the Fifth Schedule was of very wide import and gave wide discretion to the Governor to make laws for such purposes. Paragraph 173 of the judgment reads as under:

"The Governor has also been given the legislative power to make Regulations for the "peace and good government" of any area in a State which is a Scheduled Area. The words "peace and good government" are words of very wide import and give wide discretion to the Governor to make laws for such purpose. In *King Emperor v. Benoari Lal Sarma* and in *Attorney General for Saskatchewan v. Canadian Pacific Rly. Co.*, It was held that the words "peace, order and good government" are words of very wide

import giving wide power to the authority to pass laws for such purposes. In *Raja Jogendra Narayan Deb v. Debendra Narayan Roy* it was explained that these words, namely, "peace, order and good government" have reference to the scope and not to the merits of the legislation. It was again explained in *Girindra Nath Banerjee v. Birendra Nath Pal* that these words are words of the widest significance and it is not open to a court to consider whether any legislation made by the Governor would conduce to peace and good government.

GOVERNOR NOT BOUND BY THE AID AND ADVICE OF THE COUNCIL OF MINISTERS IN PERFORMANCE OF FUNCTIONS UNDER SCHEDULE V.

The Hon'ble Supreme Court in *Bhuri Nath v. State of J&K*, (1997) 2 SCC 745 has categorically held that the powers exercised by the Governor under the Fifth Schedule are discretionary powers and that whilst doing so the Governor does not act on the aid advice of the Council of Ministers. The Hon'ble Supreme Court in the said case overruled the judgment in *Mansingh Suraj Singh Padvi's* case and held:

"The ratio in *Mansingh Surajsingh Padvi case* relates to the exercise of the power by the Governor under the West Khandesh Mehwassi Estate (Proprietary Rights Abolition, ect.) Regulation, 1961. From the notification issued thereunder, the learned Judges appear to have reached the conclusion that the Governor acts with the aid and advice of the Council of Ministers. They did not correctly understand the scope of Scheduled V to the Constitution in its relation to the administration of the scheduled area. The power of State and the Governor in that behalf was not properly understood nor brought home to the learned Judges. Therefore, the learned Judges were not right in holding that the Governor while exercising the power under Schedule V of the Constitution acts with the aid and advice of the Council of Ministers. The law laid down therein is not correct in law."

Under Clause 5, the Governor may by notification direct that any particular Act of Parliament or Legislature shall not apply to a scheduled area or any part thereof or be applicable with such exceptions and modifications as may be specified in the notification.

A perusal of the Clause 5 would reveal that framers of the Constitution deemed it appropriate to confer on the Governor wide powers for the administration of scheduled areas. Under Clause 5 the Governor can declare that a law made by a state or by Parliament be not applicable to the Scheduled areas. The Government is also entitled to make regulations for the

peace and good governance of any scheduled area. In my opinion this power is discretionary as has been held by the Hon'ble Supreme Court [See (1997) 8 SCC 191, paragraph 173 and 1997 2 SCC 745 para 25].

If the powers exercisable under Clause 5 are construed to be non-discretionary the entire schemes of the Fifth Schedule would fail. The legislative power under Clause 5 of the Fifth Schedule was conferred on the Governor so that he could independently assess the administration of the scheduled areas. The Governor can not only declare that particular state or Central laws would not be applicable to Scheduled areas but also is empowered to make regulations for the administration of the Scheduled areas. To say that the powers under clause 5 of the Fifth schedule can be exercised only on the aid and advice of the council of ministers would be to empower the council of ministers of a State to override/repeal a Central law which could not have been the intention of the framers of the Constitution. The only restriction which was placed on this power of the Governor was that all the regulations made in Clause 2 of Fifth Schedule came into effect only upon the assent by the President.

The matter can be looked at from another angle. Clause 2 of Fifth Schedule states that the executive power of the State is subject to the provisions of the Fifth Schedule. Under Article 154, the executive power of the State is vested in the Governor. In so far as exercise of executive powers of the State are concerned, the Governor has to ~~be~~ exercise the same on the aid and advice of the Council of Ministers along with the Chief Minister. However, the exercise of powers by the Governor under the Fifth Schedule is not *co-terminus* with exercise of the executive power of the State but it is within the discretion of the Governor. In other words, the executive power of the State which is exercisable by the Governor on the aid and advice of the Council of Ministers has been expressly been made subject to the provisions of the Fifth Schedule. In performance of the functions and exercise of powers under the Fifth Schedule, the Governor is not bound by the aid and advice of the Council of Ministers of the State.

I would now like to draw your attention to the Forest Rights Act which is a flagship programme by the Government of India. The Forest Rights Act was enacted in December 2006 and gave a new hope to the Schedule Tribes and other Traditional Forest Dwellers living in forest areas. This act seeks to undo the historical injustice that was done to the people living in the forest area. The FR Act seeks to regularize the 'pre existing

rights 'of the people belong to Schedule Tribe and other Traditional Forest Dwellers who are already living there and have been eking out their livelihood by sustainable means.'

The impugned orders of the late Chief Minister negate the very purpose for which the Forest Regulation Act was enacted. With this more for people belongs ^{ing} to schedule tribes and other forest dwellers living in this region. A dream which was to have come true had shattered the [✓] prospects of ^h them ^{rendering} ~~being~~ house less and being deprived of their sources of livelihood ^{which} gave way to a very strong feeling of resentment, anger, fear and insecurity.

You are also aware of the fact that Panchayat Expansion to Schedule Areas popularly known as PESA Act 1996. Provisions of PESA was to recognize the GRAMA SABHA as the key unit of governance in the schedule V areas as this would in turn gave the ^{people} ~~preamble to~~ a control over their own resources. The GRAM SABHA under PESA clearly specifies that it pertains to every village or habitations which are to be constituted as a unit for the purpose of this act and it is each GRAM SABHA which is to approve plans to select beneficiaries and give utilization certificates to Gram Panchayats which have the following rights:

- a) right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation,
- b) right to recommend prospecting licenses/mining leases for minor minerals,
- c) power to prevent alienation of land and restore alienated land;
- d) power to regulate and restrict sale/consumption of liquor;
- e) power to manage village markets, control money lending to STs;
- f) ownership of minor forest produce;
- g) control over institutions and functionaries in all social sector;
- h) control over local plans and resources for such plans including TSP, etc;

i) Planning and management of minor water bodies.

The purpose of implementing PESA in such schedule V areas is to promote self governance in order to address the problem of exploitation. The provisions of PESA which is a constitutional entity have been flouted with impunity while granting mining leases in these Schedule Areas.

I would further like to mention that the mining of the Bauxite ore in Visakhapatnam District will destroy the sources of three rivers which originate from this region. The names of the Rivers are – River Gosthani, River Champavathi and River Sarada. These three rivers which are the main sources of the irrigation in Vizianagaram and Visakhapatnam Districts and also provide water for the Tatipudi and Raivada reservoirs which supplies the drinking water to the cities of Visakhapatnam and Vizianagaram will very adversely affect these facilities.

I would also like to draw your attention to the following observations made by the Hon'ble Supreme Court of India in their judgment pronounced on 7th may 2010 in Reliance natural resources Limited Vs. Reliance Industries Limited.(Civil Appeal No.4273 of 2010.)

“.....among various considerations, the prime aspect relates to national interest relating to the interest of consumers and protection of natural resources.

..... Gas is an essential natural resource and is not owned by either RIL or RNRL. The Government holds these natural resources as a trust for the people of the country. Supply of Gas is a matter of national interest.....

The natural resources are vested with the Government as a matter of trust in the name of the people of India. Thus it is the solemn duty of the State to protect the national interest.

The constitutional restrictions on the government would equally apply to the private players in this process. Natural resources must always be used in the interests of the country, and not private interests.

These observations which were made by Chief Justice of India, Sh^{ri}. K.G.Balakrishnan (as he was then) and Justice P.Sathasivam in their judgment in the above-mentioned cases. Though made in the context of the natural resources pertaining to Civil Appeal No.4273 of 2010 are very much relevant vis-à-vis natural resources of this country and these observations underscore the vital importance of the preservations of natural resources.

Article under the provisions of Article 39(b) of the Constitution " The State Shall in particular, direct its policy towards securing-that ownership and control of the material resources of the community are so distributed as best to sub serve the common good. "

I would like to bring to you the fact that bauxite mining in his region will adversely impact the ecological balance which will cause severe imbalance to the environment and topography of the area. Various plantations which have been providing succu^{ouy}~~umb~~ to the local inhabitants will be destroyed and Araku which has become a tourist destination will suffer irreparable los[§] as far as the tourist industry is concerned.

I am attaching along with this a note which I had procured from the ministry of the Mines, Government of India of your ready reference.

It is ironical that the license to AnRaK a middle east based company was signed by Y.Srilakshmi the former Secretary of Industry and Commerce who is now languish^{ing} in prison in the Obulapuram illegal mining case and former APMDC, MD, P.D.Rajagopal who signed the supply agreement between APMDC and AnRaK is also in jail due to his involvement in the infamous Obulapuram Mining case. The mala-fide intentions are an abundantly clear and impugned license which has been issue along with a impugned MOU which was signed are mere

17
executive orders and not enactments of legislature. They are ultra virus the constitution and do not require either the approval of the Tribal Advisory committee or the assent of her Excellency the President of India.

I would finally like to urge upon you and request you to cancel the impugned orders and MOU's which are ultravires the constitution by invoking the unbridled and unfettered powers have been granted to you by our constitution with respect to the Schedule V Areas to maintain/restore peace and good government.

You will also appreciate the fact that extremist activities have now reached a point which is threatening our national security. Your intervention at this stage will not only strike at the basic premise on which the Maoist's have gained sympathy in our state, but will also send a strong message across the borders of A.P to other affected states like Odisha, Chattishgarh and Jharkhand where ^{the critical} situation ~~predicaments are~~ ^{is} causing great concern and haunting the minds of Scheduled Tribes living in the similar areas.

I honestly and sincerely trust that you will do the needful.

Yours sincerely,

Sd/-

(V.Kishore Chandra Deo)

To:
HE.Shri.E.S.L.NARASIMHAN,
Governor of Andhra Pradesh,
RAJ BHAWAN,
HYDERABAD.

Encl:

1. A copy of the letter D.O.No.9(7)/2010-Met-I/602 dated 10th June 2010 of Shri.B.K.Handique, Hon'ble Minister of Mines, Govt. of India.
2. Note on Mining of Bauxite in the District of Visakhapatnam, Andhra Pradesh from the Ministry of Mines, Government of India.

D.O. No. 9(7)/2010-Met-I / 602

10th June, 2010

Dear Shri Deo Ji,

Please refer to your letter dated 1st April, 2010 regarding mining of Bauxite ore in Vishakhapatnam District of Andhra Pradesh in your Parliamentary Constituency.

I have got the matter examined. As per the information available in my Ministry, Vishakhapatnam District of Andhra Pradesh of your Parliamentary Constituency has a total bauxite reserve of approximately 5,70,571,000 tonnes mainly in the seven bauxite bearing areas in the district namely, Jerrela Block, Gudem Block, Chintapalli Reserve Forest, Galikonda Reserve Forest, Rakthakonda Reserve Forest, Chittamgondi Reserve Forest and Sapparla Block, which constitute 90% of the total bauxite reserve in the district. As per the information obtained from Government of Andhra Pradesh and the Indian Bureau of Mines under my Ministry, no mining lease for bauxite in Vishakhapatnam has been executed so far, and as such there are no mines for bauxite in operation in Visakhapatnam.

As per the information obtained from the State Government and the Andhra Pradesh Mineral Development Corporation (APMDC), there has been some opposition to start of mining activities in Vishakhapatnam by the local tribal people since 1993. The State Government is in the process of developing a package for tribal population for the entire area and as a part of its efforts in this direction, the Government of Andhra Pradesh has issued a circular to the effect that any mining work in the area shall employ the local tribal people. The State Government is also in the process of inviting applications for the positions of General Manager to mine worker.

The Ministry of Mines has given prior approval for Bauxite in Vishakhapatnam under Section 5(1) of the MMDR Act, 1957 in ten cases, of which first seven cases are given to Andhra Pradesh Mineral Development Corporation (APMDC) and last three cases given to NALCO. Status of each case is shown in the table at page 11 of the detailed note enclosed. In respect of first three cases, Government of Andhra Pradesh has on 1.7. 2005, signed an MOU with M/s. Jindal South West Holdings Ltd. (M/s JSW Ltd.) according to which the APMDC will be supplying bauxite to M/s JSW. In regard to remaining four cases, the Government of Andhra Pradesh has on 14.2.2007 entered into an MOU with M/s Ras Al Khaimah (RAK), UAE, under which APMDC will supply bauxite for the Alumina plant being set up by M/s. Ras Al Khaimah in Andhra Pradesh. In these four cases, APMDC has informed that their mining lease cases have obtained forest clearance under the Compensatory Forest Clearance Scheme, and their first mining activity is expected to commence in June 2011. Public hearing has also been conducted in these four cases, wherein Ministry of Environment and Forests (MOEF) has asked for modifying the mining plans and also for

implementing the mitigation plan. The mitigation plan suggested by the MOEF is expected to address the apprehension raised by the local tribal population in the public hearing. The APMDC has also sent a statement showing the action taken by them with reference to the conditions mentioned by the MOEF in connection with the environmental and forest clearances.

There are thirteen more applications recommended by the Government of Andhra Pradesh in favour of the APMDC for prior approval for mining lease for bauxite in Sapparla Blocks, Vishakhapatnam, which are at various stages of process in the Ministry. As per the MOU dated 1.7.2005 between the Government of Andhra Pradesh and M/s JSW, the Government has directed the APMDC to supply bauxite from the areas of Sapparla deposits to M/s. JSW.

NALCO was also accorded prior approvals of Bauxite in Vishakhapatnam in three cases, which is in Chintapalli Reserve Forest area. NALCO was asked to submit the mining plan and other clearances, which are awaited.

I would like to stress upon that, no doubt, there are some negative impact of bauxite mining in tribal and forest areas, but the positive impact cannot be ignored. You would agree that living standards of people in periphery areas changes substantially due to direct and indirect employment opportunities. Mining in the area has better access to education, healthcare and other infrastructure. Moreover, it prevents mass migration to cities from villages and also prevents exploitation at the hands of local money lenders. Besides, hill tops with bauxite deposits which are normally without vegetation and habitation become much greener forest after back filling and compensatory afforestation.

A detailed note on the entire gamut of issues involved in the matter is enclosed for kind perusal. My Ministry is in the process of bringing in a new legislation to replace the MMDR Act. The following issues will, inter alia get addressed in the process:-

- (i) The concept of partnering with the host population in an area is provided, including consent, activities under Sustainable Development Framework and proper mine planning and mining closure based on consultation with local community.
- (ii) In case of small deposits (cluster mines) cooperatives of tribal people would get preference in obtaining mineral concessions.
- (iii) In case of exploration licenses, a compensation in the form of annuities to each person in affected host population in exploration area for usufruct or traditional rights.

- (17)
- (iv) In case of mining lease, free shares in the mining company from promoter's quota or an annuity from profit after tax as annual compensation distributed to identified host populations, and employment and other assistance as applicable under the State R&R policy.
 - (v) Indirect benefits in the form of development activities in local area from State Mineral Fund, accrued at the rate of upto 10% of royalty. Corporate Social Responsibility (CSR) by the lessees. CSR to be part of the mining plan.

However, in the context of the issues raised by you, I am asking the Ministry to hold a meeting with the State Government, Ministry of Environment & Forests and Ministry of Tribal Affairs in order to formulate a broad plan and framework to cover the area in question having regard to the fact that it consists of tribal population, and is forested, and has tourism and other non-mineral potential which need to be safeguarded. Hopefully the framework can guide the policy with regard to the strategy for exploration of the bauxite resources of the area. I will keep you informed of developments in this regard and seek your co-operation.

With regards,

Yours sincerely,



(B.K. Handique)

Encl: As above.

Shri V. Kishore Chandra Deo,
M.P. (Lok Sabha),
Chairman,
Committee on Public Undertakings,
64- Lodhi Estate,
New Delhi-110003

NOTE ON BAUXITE MINING IN VISAKHAPATNAM DISTRICT, ANDHRA
PRADESH.

....

As per information available with the Ministry of Mines, following are bauxite bearing areas in the district of Visakhapatnam:

- i) Jerrela Block
- ii) Gudem Block
- iii) Chintapalli Reserve Forest
- iv) Galikonda Reserve Forest
- v) Rakthakonda Reserve Forest
- vi) Chittamgondi Reserve Forest
- vii) Sapparla Block.

2. The Indian Bureau of Mines have intimated that the district Visakhapatnam has a total Bauxite reserve of approximate 5,70,571,000 tonnes. The above-mentioned areas account for 90% of the total Bauxite reserve of the district. As per the information obtained from the Government of Andhra Pradesh and the Indian Bureau of Mines, no mining lease for Bauxite in Visakhapatnam has been executed so far, and as such there are no mines for Bauxite in operation in Visakhapatnam.

3. The above-mentioned areas are known as AOB (Andhra Orissa Border) areas and are inhabited by tribal people to the extent of almost 100%. These areas are also affected by Maoist movement.

4. As per the information obtained from the State Government and the APMDC, there has been a lot of opposition to the mining activities in Visakhapatnam by the local people since 1993. Opposition to mining is known to have Maoist sympathizers. The local population generally complains of dust and lack of basic facilities like water, health, roads etc in the area. The State Government is in the process of developing a package for tribal population for the entire area. As part of its efforts in this direction, the Government of Andhra Pradesh has issued a circular to the effect that any mining work in the area shall employ the local tribal people. The State Government is also in the process of inviting applications for the positions of General Manager to mine worker. The State Government is committed to ensuring that there is no displacement of the tribal people in the area. There is a buffer zone of 5 kms where 3000 people live. The State Government is also committed to implementing 100% Samata judgement. All-round socio-economic tribal development is the main thrust of development efforts of the State Government. Mining is perceived as one of the strategies of development. Local population has been agitating against mining and have represented that they do not want any mining. Public hearing for Environment Plan was held

... was given on 12.12.2006. Local population is dissatisfied with mitigation measures for dust, water, trees, roads etc.

19

5. The Ministry of Mines has given prior approvals for Bauxite in Visakhapatnam under Section 5 (1) of the MMDR Act, 1957 in ten cases. Status of each case is shown in the following table:

S.No.	Name of the PSU	Area in hectares	Village/District	Date of approval	Present status of the case.
1.	Andhra Pradesh Mineral Development Corporation (APMDC)	93.883	Galikonda Reserve Forest	7.12.2007	Mining Plans approved. Mining lease not yet executed.
2.	APMDC	113.192	Rakthakonda RF	7.12.2007	-do-
3.	APMDC	152	Chittamgondi RF	7.12.2007	-do-
4.	APMDC	125	Jerrela Block I	5.11.2007	-do-
5.	APMDC	289	Jerrela Block II	5.11.2007	-do-
6.	APMDC	335	Jerrela Block VIII	5.11.2007	-do-
7.	APMDC	900	Jerrela Block III	5.11.2007	Mining Plans approved. Mining lease not yet executed.
8.	NALCO	93	Chintapalli RF	15.9.2009	NALCO asked to submit mining plan and other clearances, which are awaited.
9.	NALCO	153.62	Chintapalli RF	16.9.2009	-do-
10.	NALCO	141	Chintapalli RF	16.9.2009	-do-

Government of Andhra Pradesh has, on 1.7.2005, signed an MOU with M/s. Jindal South West Holdings Ltd. (M/s JSW Ltd.) according to which the APMDC will be asked to supply Bauxite to M/s JSW. As regards the APMDC cases at S.No. 1, 2 and 3, the Government of Andhra Pradesh has, on 14.2.2007, entered into an MOU with M/s Ras Al Khaimah, UAE, under which APMDC will supply Bauxite for the Alumina plant being set up by M/s. Ras Al Khaimah in Andhra Pradesh.

7. The APMDC has informed that in four of their mining lease cases viz. at S.No. 4,5,6 and 7 above, forest clearances have been obtained under the Compensatory Forest Clearance Scheme, and their first mining activity is expected to commence in June, 2011. Public hearing has also been conducted in these four cases, wherein Ministry of Environment and Forests (MOEF) has asked for modifying the mining plans and also for implementing the mitigation plan. They have also suggested methods to generate employment for local population. The mitigation plan suggested by the MOEF is expected to address the apprehensions raised by the local tribal population in the public hearing. The APMDC has also sent a statement showing the action taken by them with reference to the conditions mentioned by the MOEF in connection with the environmental and forest clearances. The conditions imposed by the MOEF are broadly as under:

- a) Mining shall begin from Jerrela Block III and the other Blocks shall not be worked before Block III is exhausted and reclamation is completed.
- b) No two pits shall be simultaneously worked i.e. before the first is exhausted and reclamation completed, no more mineral bearing area shall be worked.
- c) Adequate buffer zone shall be maintained between two consecutive mineral bearing deposits.
- d) Primary survey of flora and fauna in the core and buffer zone shall be carried out.
- e) Adequate measures for regeneration/restoration of rare plants including medicinal plants and wildlife species shall be undertaken.
- f) Conservation plan for wildlife shall be prepared.
- (g) 20% of the profit shall be spent for the development of the area and benefit of the tribal people.
- (h) There shall be no other construction/real estate development activities.
- (i) Plan for adequate measures to compensate loss of forest cover shall be submitted.
- (j) Socio-economic survey on house hold basis for the nearest villages around Block III shall be completed first and economic package containing rehabilitation shall be submitted within six months.
- (k) Measures like maintenance of village roads, rain water harvesting, prevention and control of soil erosion, monitoring of ground and surface water, cultivation of waste land, adequate plantation in the ML area, control of dust generation etc. shall be undertaken.
- (l) Transportation of ore shall be done by covering the trucks with tarpaulin so that there are no spillages of ore, and vehicular emissions shall be kept under control and monitored.
- (m) Occupational health and safety measures for the workers shall be carried out.
- (n) Hydro-geological study of the area shall be undertaken annually.

o) A dedicated cell shall be set up I the M/s APMDC to keep watch on any unauthorized construction and other activities.

(p) A final mine closure plan along with details of Corpus Fund shall be submitted five years in advance of final mine closure.

8. M/s APMDC is taking necessary action on all the conditions imposed by the MOEF.

9. There are 13 more applications recommended by the Government of Andhra Pradesh in favour of the APMDC for prior approval for mining lease for Bauxite in Sapparla Blocks, Visakhapatnam, which are at various stages of process in the Ministry. As per the MOU dated 1.7.2005 between the Government of Andhra Pradesh and M/s JSW, the Government has directed the APMDC to supply Bauxite from the areas of Sapparla deposits to M/s. JSW.

Pollution issues in aluminium industry

Fluoride

This is generated from the pot during smelting of alumina and cryolite. Fluorine can pollute either by air or by water. To control/prevent the fluoride emission by air, dry scrubbing system may be adopted. In this process, the fluoride gas generated from pots is mixed with the fresh alumina in the FTP(Fume treatment plant) and got adsorbed. This is recycled in the process and not allowed to escape to atmosphere.

Fugitive fluorine emission

This is generally controlled by making tight covering of pots and maintaining them in little vacuum so that fluorine bearing gases does not escape to atmosphere.

Crushed bath

This also contains some amount of fluorides. This is generally generated during feeding of bath to pots. It is prevented by collecting all the spillage from plant and recycling. If any thing is carried to draining system by water, it is treated in the de fluorination plant.

Fly Ash

A captive power plant is generally set up in the vicinity for supplying the required power to smelter plant as aluminium is a power intensive industry. In thermal plants, the main source of pollution is due to ash generated on burning of coal. This is controlled by installing Electro Static Precipitators (ESPs) in all units. It has efficiency of 99.8%. The bottom ash collected from boiler, air heater is transported along with the ash collected in the ESP to ash pond by lean slurry system. Fly ash is also disposed in empty mine voids. Some fly ash is used to manufacture bricks, cement etc.

Red mud from refinery

In the production of smelter grade alumina in refinery by Bayer process, red mud or Bauxite Residue is a waste/by-product. For each tonne of alumina so produced, on an average 1.10-1.50 tonnes of red mud is generated. This waste product is known from its oxidised iron content as red mud, and because it has been subjected to sodium hydroxide(caustic soda) treatment, is highly caustic with pH values in excess of 13.2. Consequently it gives rise to storage problems and it's disposal remains an issue of great importance with environmental implications.

The red mud generated from alumina production contains bound + soluble caustic soda. One of the present methods of disposal (as followed by NALCO/ Vedanta) is to re-pulp the red mud coming out from the last washer mud as 150 gram/litre slurry and pump it to red mud ponds. The return water from pond containing soda is used in the plant for red mud washing. Though some mebrane lining is provided below the pond the chances of leachate containing caustic soda is always there and it contaminates the ground water. Another way is to neutralise the red mud (as being done in Australia) before pumping so that the possibility of contamination is reduced upto certain extent. To reduce the hazards associated with disposal of red mud, dry disposal method is also used (as practised by Hindalco at their Renukoot Plant) which will reduce the ground water contamination. The other method is to utilise red mud as a raw material for producing bricks/ stabilized blocks for building and construction purpose using flyash and other waste material.

WORLD RESOURCES OF BAUXITE

(In Billion tonnes)

Rank	Country	Reserve base
1	Guinea	8.6
2	Australia	7.9
3	Brazil	2.5
4	Jamaica	2.5
5	China	2.3
6	India	1.4#
	World total	32.00

Source: Mineral Commodity Summaries (as appearing in IBM Indian Minerals Year Book 2007).

However, the total resources of bauxite in India as per United Nation Framework Classification system as on 1.4.2005 are estimated at 3.29 billion tonnes.

LEADING ALUMINIUM PRODUCERS OF THE WORLD

(25)

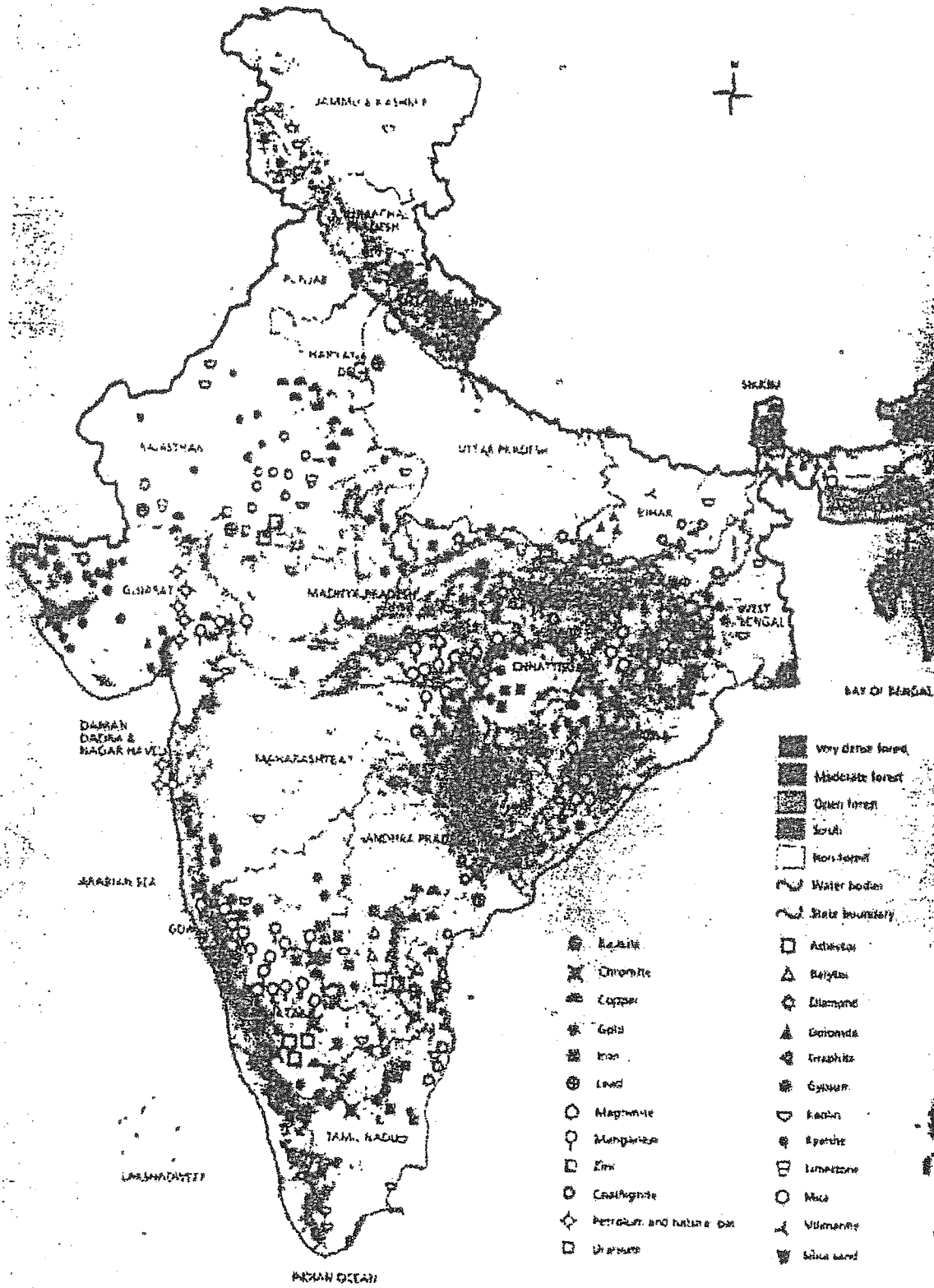
As of December, 2009, country wise, China is leading aluminium producer with production of 12.9 million tonnes, followed by Russia (3.8 million tonnes), Canada (3 million tonnes) Australia (1.95 million tonnes) and USA (1.7 million tonnes) *out of total production of 36.7 million tonnes.* India ranks 7th with production of 1.48 million tonnes.

As per Brook Hunt report (December, 2009), the Company wise production in the year 2009 is as follows:

Rank	Name of the Company	(lakh tonnes)	Country
1	UC Rusal	39.345	Russia
2	Rio Tinto	37.877	Australia, South America, Middle East, etc.
3	Alcoa	34.270	Canada
4	Chalco	31.867	China
5	BHP Billiton	12.301	South Africa, Mozambique, Brazil, etc.
6	Hydro Aluminium	12.211	Norway
7	Dubal	9.220	Dubai
8	China Other	8.730	China
9	Alba	8.500	Bahrain
10	Private & Other	7.545	World wide
11	East Hope	6.661	China
12	Yichuan Electrical	6.180	China
13	Century Aluminum	5.822	USA
14	Hindalco	5.520	India
15	Qingtongxia Aluminium	5.300	China
16	Weiqiao Textile Group	4.900	China
17	Govt of Venezuela	4.812	Venezuela
18	Henan Shenhua Group	4.770	China
19	Huomei Hongjun	4.750	China
20	CBA	4.740	Brazil
21	Nalco	4.220	India

Source: NALCO

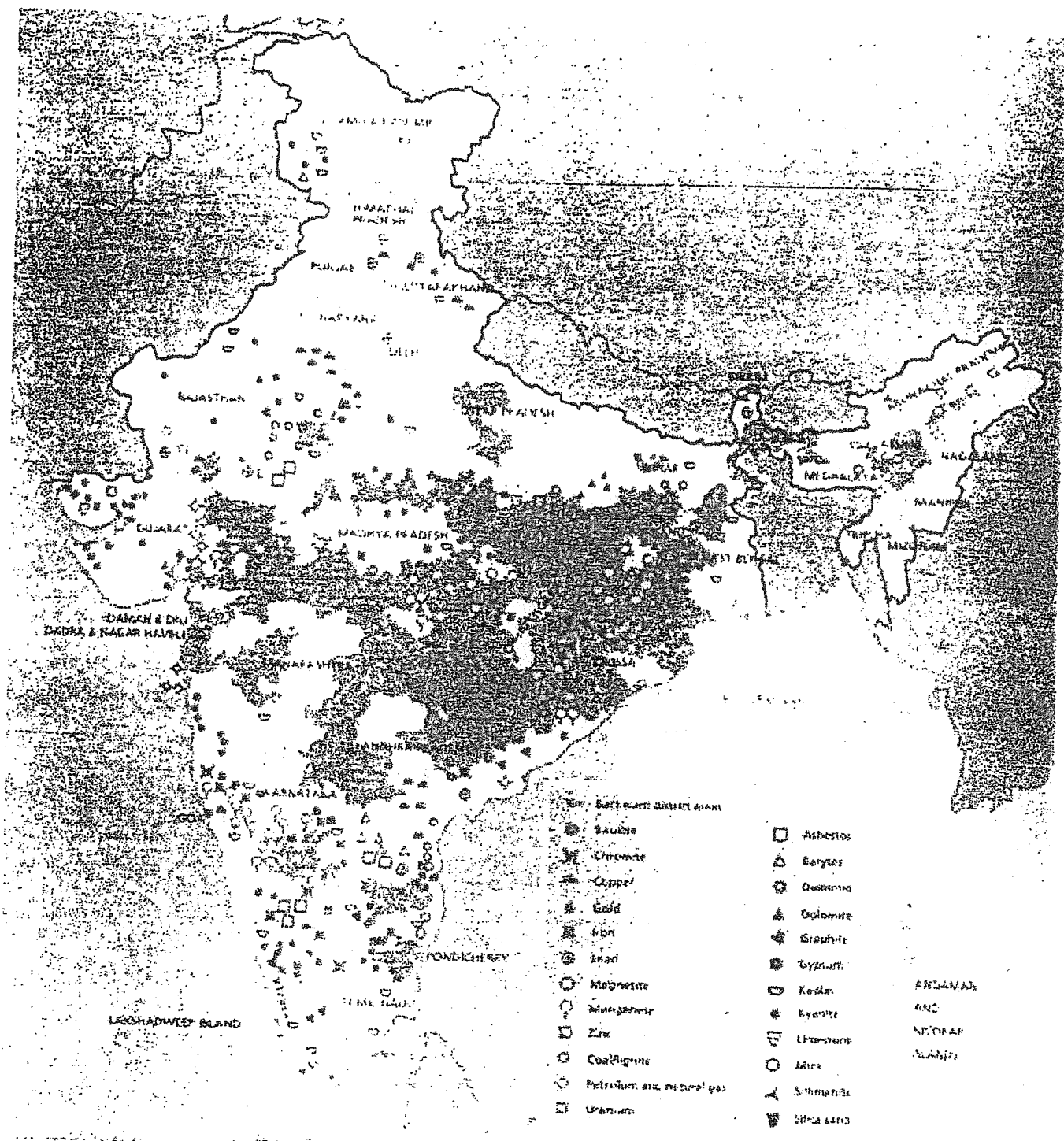
Forests and Minerals



Source: State of India's Env, CSE

Source: State of India's Env, CSE

Minerals and Poverty



Source: State of India's Env, CSE