

# The Annual Survey of State Laws in India

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## Introduction

The Constitution of India entrusts state legislatures with the responsibility to make laws for their states. State legislatures, thus, have the power to enact laws related to agriculture, public health, education, local government, police and other such subjects in the state list and concurrent list of the Constitution's seventh schedule. Given the importance of state governments in the Indian federal system, it was decided to look into the legislative output of various states in the Indian polity for the calendar year 2020. The present survey focuses on the legislative output of the state of Jharkhand. For the survey, all the bills enacted, ordinances promulgated, and resolutions passed in 2020 were examined. It is to be noted that much of the information related to the reportage of legislative proceedings and documents of the Jharkhand legislative assembly were not published on the Jharkhand Vidhan Sabha website.<sup>2</sup> Thus, for the present survey, wherever primary data were not available, newspaper reports and other secondary sources were also relied upon.

## Performance of the Jharkhand Legislative Assembly: An Overview

In 2020, the Jharkhand state legislature met for four sessions. The total number of sitting days was 21, of which 17 were before the lockdown, and four, after.

The State legislature passed only 12 bills in the year. Of these, four were appropriation bills, and the rest on taxation, labour and health.

The hours spent on legislative activity were minimal in 2020. All bills were passed through a voice vote on the same day as the day of their introduction.<sup>3</sup> There was no discussion on the legislations and no reference to select committees, despite opposition leaders' requests to send three bills (the Motor Vehicles Amendment Bill,<sup>4</sup> the Mineral-Bearing Land Pandemic Cess Bill<sup>5</sup> and the Physiotherapy Council Bill)<sup>6</sup> to select committees. The same request was also turned down by the speaker of the

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1. Assistant Professor (Law), NALSAR University of Law.

2. The official and highly limited data released by the Jharkhand Assembly is *available at*: <https://jharkhandvidhansabha.nic.in/>, (last visited on Dec. 16, 2021).

3. Anoop Ramakrishnan and N R Akhil, "Annual Survey of State Laws 2020", *available at*: <https://prsindia.org/policy/analytical-reports/annual-review-of-state-laws-2020>, (last visited on Jan. 25, 2022).

4. The Jharkhand Motor Vehicle Taxation (Amendment) Bill, 2020.

5. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Bill, 2020.

6. The Jharkhand State Council of Physiotherapy Bill, 2020.

House.<sup>7</sup> No select committees were constituted to scrutinise some of the critical bills passed by the state legislature. The analysis of the legislative performance of the state suggests that there was no detailed scrutiny of any bills passed in the year. This, coupled with the fact that there were fewer working days in the calendar year 2020 due to the pandemic-prompted lockdown, shows that the state's legislature barely spent any time scrutinising the legislative proposals brought before them. In 2020, Jharkhand enacted seven legislations, of which some are closely examined in the subsequent sections.

## A Critical Analysis of Relevant Enactments

### Taxation

The economic slowdown resulting from the lockdown prevailing in 2020 impacted the revenue receipts for all the states in India. It has been reported that in 2020-2021, Jharkhand's total revenue receipts (excluding borrowings) fell short of the state's estimated budget by Rs 8,363 crore (a reduction of almost 11 per cent).<sup>8</sup> Moreover, in this year, Jharkhand incurred a huge financial deficit, owing to the union government defaulting on the payment of GST compensation and payments due to the state under various other heads.<sup>9</sup> Thus, most of the legislations enacted by the Jharkhand legislature in the year 2020 were motivated by the need to augment the state's revenue receipts.

In view of the COVID-19 pandemic, the central government permitted states to increase their fiscal deficit limit from three percent of GSDP to five percent in 2020-2021.<sup>10</sup> However, it is to be noted that of this two percent increase, one percent remained conditional upon the implementation of reforms by states in the following four areas: (i.) one nation one card, (ii.) ease of doing business, (iii.) urban local body/utility and (iv.) power distribution. Since Jharkhand did not undertake any of the four aforementioned reforms, it was ineligible to avail itself of the additional one percent reform-linked borrowing.<sup>11</sup> Therefore, the union government allowed Jharkhand to increase its fiscal deficit only up to four percent of the GSDP during the financial year 2020-2021. To raise the earlier statutory cap of three percent, the state government amended the Jharkhand Financial Responsibility and Budget Management Act, 2007. Amendments to the Jharkhand Goods and Services Tax Act also correspond to the GST council's recommendation.<sup>12</sup> Different measures were proposed to generate extra revenue due to the COVID-19 situation, including charging a cess on mineral-bearing lands. These will be discussed in detail in a subsequent section.

7. TNN, "House debates Covid scenario, passes eight bills", *Times of India*, Sep. 23, 2020, available at: <http://timesofindia.indiatimes.com/articleshow/78264633.cms> (last visited on Feb. 01, 2020).

8. Amitabh Srivastav, "Why a Centre-State logjam in Jharkhand is blocking a higher coal production", *India Today*, Nov. 17, 2021, available at: <https://www.indiatoday.in/india-today-insight/story/why-a-centre-state-logjam-in-jharkhand-is-blocking-higher-coal-production-1877889-2021-11-17> (last visited on Jan. 17, 2022).

9. Anand Dutta, "'Entire India could plunge into darkness' — Soren warns of coal blockade after row with Centre", *The Print*, Oct. 19, 2020, available at: <https://theprint.in/politics/entire-india-could-plunge-into-darkness-soren-warns-of-coal-blockade-after-row-with-centre/526585/> (last visited on Jan. 22, 2022).

10. Press Information Bureau, "Aatmanirbhar Bharat Part 5: Government Reforms and Enablers", Ministry of Finance, May 17, 2020, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1624661> (last visited on Jan. 26, 2022).

11. Suyash Tiwari and Saket Surya, "State of State Finances", *PRS Legislative Research*, Nov. 2021: available at: <https://prsindia.org/policy/analytical-reports/state-state-finances-2020-21> (last visited on Jan. 25, 2022).

12. *Id.* at 17.

## Land and Natural Resources

The year witnessed a constant tussle between the centre and the state over the jurisdiction of land and natural resources. But, before getting into the specifics of the state enactment concerning land and natural resources, it would be necessary to note that the central government in 2020 pushed for various amendments to the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the primary law governing mining in India. In 2020, the central government promulgated the Mineral Laws (Amendment) Ordinance 2020. It thereafter passed the Mineral Laws (Amendment) Act, 2020, which effectively amended the Mines and Minerals (Development and Regulation) Act, 1957, and the Coal Mines (Special Provisions) Act, 2015.<sup>13</sup> The imperious nature of the exercise can be deduced from the fact that the mines ministry asked various stakeholders to evaluate the proposals and send their comments and suggestions in just ten days, which is less than the minimum window under any pre-legislative consultation policy. One of the most contentious highlights of the amendments to the MMDR Act was the power to auction coal mines, which has effectively been privatised through “open-access auctioning” of coal blocks. The entire process of auctioning coal blocks has thereby been centralised.<sup>14</sup> The amendment empowered the central government to auction mines that the states had failed to auction themselves.<sup>15</sup> The justification for the move was that the centre wanted to help the states get money, while they faced severe economic hardship due to the pandemic.<sup>16</sup> Moreover, according to the coal ministry, these amendments would enable “*seamless mining operations*” by ensuring that environment and forest clearances and other approvals get automatically transferred to the new owners of mineral blocks for a period of two years from the date of grant.<sup>17</sup> However, experts note that with this amendment, the central government has practically turned environmental clearances into a cursory affair by violating provisions of both the Forest Rights Act and the Panchayats (Extension to Scheduled Areas) Act, 1996.<sup>18</sup>

Despite these reservations, the central government, without any prior approvals from the state government, included nine coal blocks from Jharkhand in the first round of auctions in June 2020. The state government asserted that the centre’s decision to proceed with the auction ignoring the concerns voiced by Jharkhand should be seen as “*a blatant disregard for cooperative federalism*.”<sup>19</sup> Following this action of the centre, the Jharkhand government filed a writ petition in the supreme court of

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13. The ordinance was replaced by the Mines and Minerals (Development and Regulation) Amendment Bill, 2021, passed in March 2021.

14. Special Correspondent, “Narendra Modi launches auction process for 41 coal blocks for commercial mining”, *The Hindu*, June 18, 2020, available at: <https://www.thehindu.com/news/national/narendra-modi-launches-auction-process-for-41-coal-blocks-for-commercial-mining/article31858048.ece> (last visited on Feb. 15, 2022).

15. Gerard de Souza and Chetan Chauhan, “Centre proposes to take over mine auction, some states oppose”, *Hindustan Times*, March 4, 2021, available at: <https://www.hindustantimes.com/india-news/centre-propose-to-take-over-mine-auction-some-states-oppose-101614757311685.html> (last visited on Feb. 15, 2022).

16. *Ibid.*

17. Press Information Bureau, “Parliament Passes The Mineral Laws (Amendment) Bill, 2020, Bill to transform Indian mining sector: Prahlad Joshi”, Ministry of Coal, March 12, 2020, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1606090> (last visited on Feb. 16, 2022).

18. Sushmita, “The devastating cost of India’s push towards a coal-based economic recovery”, *The Caravan*, July 31, 2021, available at: <https://caravanmagazine.in/environment/devastating-cost-india-coal-recovery> (last visited on Feb. 18, 2022).

19. Satyasundar Barik, “Hemant Soren says Centre’s decision on coal mine auction a ‘disregard of cooperative federalism’”, *The Hindu*, June 21, 2020, available at: <https://www.thehindu.com/news/national/hemant-soren-says-centres-decision-on-coal-mine-auction-a-disregard-of-cooperative-federalism/article61666347.ece> (last visited on Feb. 16, 2022).

India challenging the Central government's decision of holding the coal blocks auction.<sup>20</sup> The petition, among other things, stresses the need for a "fair assessment of the social and environmental impact on the huge tribal population and vast tracks of forest lands of the State which are likely to be adversely affected."<sup>21</sup> The petition is still pending before the supreme court, which, in its interim order, has made any action of the union in the present matter subject to the court's orders.<sup>22</sup> This means that the supreme court may cancel the allocation process in the final judgment if the auctions are found to be illegal. Thus, the saga of coal block allocation continues to be a seriously contested issue in Jharkhand.

The Jharkhand Mineral Bearing Lands (COVID-19 Pandemic) Cess Act, 2020<sup>23</sup> was the relevant state enactment concerning land and natural resources. This controversial piece of legislation raises several questions about the allocation of taxing powers between the centre and states, especially when it comes to the power to levy cess on mineral resources and mineral-bearing land. The aforementioned Act, was enacted on November 18, 2020, and extended to the entire state of Jharkhand in order to enable the state government to levy a cess of ₹10 on every tonne of coal despatched and ₹5 on every tonne of iron ore sold. The Act also specified the cess payable on minerals such as bauxite, limestone and manganese, which was fixed at ₹20, ₹10 and ₹5 per tonne of dispatch, respectively.<sup>24</sup>

Before the Assembly passed the Act, it was promulgated as an Ordinance<sup>25</sup> in order to "*shore up revenue for the State*".<sup>26</sup> The official notification issued on July 06, 2020, stated that:

"[C]ircumstances exist which render it necessary to take immediate action to promulgate an Ordinance to provide the levy of cess on mineral bearing land for the rehabilitation and employment of labourers and migrant labourers, creating infrastructures in the field of cottage/village Industries, MSME, creating employment opportunities, mitigating the hardships caused due to loss of jobs, augmenting the existing health infrastructures and *for other necessary purposes* in Jharkhand arising out of disaster by way of COVID-19 pandemic,"<sup>27</sup> (emphasis supplied)

It is critical to know that income derived from mineral royalties is a significant contributor to the revenues generated by the state. Even so, the state's mineral wealth data suggest that the revenue receipts for the state during the period between April-October, 2020 declined by almost 16 percent in comparison to the same period in the the previous year.<sup>28</sup> Thus, faced with a revenue shortfall and a necessity to revise spending priorities amidst the pandemic, the state decided to promulgate

20. Harshit Sabarwal, "Jharkhand moves SC against Centre's decision to auction coal blocks for commercial mining", *Hindustan Times*, June 21, 2020, available at: <https://www.hindustantimes.com/ranchi/jharkhand-moves-sc-against-centre-s-decision-to-auction-coal-blocks-for-commercial-mining/story-1K1ljWZYtFboJAKiDV2i6I.html> (last visited on Feb. 16, 2022).

21. Scroll Staff, "SC issues notice to Centre on Jharkhand's petition against coal mining auction", *The Scroll*, July 14, 2020, available at: <https://scroll.in/latest/967460/sc-issues-notice-to-centre-on-jharkhands-petition-against-coal-mining-auction> (last visited on Feb. 16, 2022).

22. Mehal Jain, "Supreme Court Makes Jharkhand Coal Block Auction Provisional and Subject to Orders", *Live Law*, Nov. 6, 2020, available at: <https://www.livelaw.in/top-stories/jharkhand-coal-block-auction-while-not-holding-off-impending-auction-sc-says-all-action-would-be-provisional-subject-to-further-orders-165598> (last visited on Feb. 18, 2022).

23. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Act, 2020 (Act 6 of 2020).

24. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Act, 2020 (Act 6 of 2020), ss. 2(4) and 3(1).

25. The Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Ordinance, 2020 (Jharkhand Ordinance 1, 2020).

26. PNS, "Govt brings in cess to boost revenue collection", *The Pioneer*, June 18, 2020, available at: <https://www.dailypioneer.com/2020/state-editions/govt-brings-in-cess-to-boost-revenue-collection.html> (last visited on Jan. 19, 2022).

27. *Supra* note 25.

28. *Supra* note 11.

an ordinance and eventually enacted it into a legislation to enable the state government to collect a 'pandemic cess' on mineral-bearing lands.

Significantly, even though the proprietary title to major minerals vests with the state government, their ownership is subject to the laws governing regulation and control of mining enacted by the central government.<sup>29</sup> The MMDR Act, 1957, the relevant central legislation on the matter, confers on state governments the right to allow exploitation of mineral resources by grants of licenses and lease according to the rules specified therein.<sup>30</sup> The central Act includes different schedules that prescribe rates of dead rent and royalties applicable for certain minerals. Thus, regarding the major minerals mentioned in Schedule 1, state power has been limited to holding possession, receiving royalties and a few other payments like dead rent. The power to determine royalty rates also lies with the union government, and the state governments have no say in the matter.

Meanwhile, a private steel corporation has moved the supreme court challenging the constitutional validity of the cess imposed by the *Jharkhand Pandemic Cess Act, 2020*.<sup>31</sup> At present, the apex court has only admitted the petition that challenges the state government's right to levy such a cess. It remains to be seen how the apex court decides the devolution of fiscal powers between the centre and the states.

The crucial question is whether the state government had the right to enact legislation to impose a cess on mineral resources and mineral-bearing land, especially when it was already collecting royalties on such resources and land. Any deliberation on this issue requires a close examination of the federal structure of India concerning mineral resources. This section looks at how our Constitution divides the powers and functions over resources and resource-development between the states and the union.

The following entries of the union and the state list in Schedule VII of the Constitution of India spell out the inter se jurisdiction between centre and states to regulate and develop mines and mineral resources.

Union List	State List
<p><b>Entry 52</b> Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.</p>	<p><b>Entry 23</b> Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.</p>
<p><b>Entry 54</b> 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.</p>	<p><b>Entry 49</b> Taxes on lands and buildings.</p>

29. Ligia Noronha, Nidhi Srivastava, *et al.*, "Resource Federalism in India: The Case of Minerals" 44(8) *Economic and Political Weekly* 53 (2009).

30. Mines and Minerals (Development And Regulation) Act, 1957 (Act 67 of 1957).

31. Bureau, "Covid cess: Tata Steel moves SC against Jharkhand govt", *The Hindu Business Line*, Dec. 18, 2020, available at: <https://www.thehindubusinessline.com/companies/covid-cess-tata-steel-moves-sc-against-jharkhand-govt/article33365872.ece> (last visited on Jan. 21, 2020).

Union List	State List
<p><b>Entry 96</b></p> <p>Fees in respect of any of the matters in this List, but not including fees taken in any court.</p>	<p><b>Entry 50</b></p> <p>Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.</p>
<p><b>Entry 97</b></p> <p>Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.</p>	<p><b>Entry 66</b></p> <p>Fees in respect of any of the matters in this List, but not including fees taken in any court.</p>

Entry 23 of the state list makes the imposition of taxes on ‘mineral rights’ predominantly the prerogative of the state in which they are located. However, this power reposed in the states is not absolute as it has been made subject to any limitations imposed by any law enacted by the parliament.<sup>32</sup> Therefore, while the states own the mineral resources located within their territory, the jurisdiction to regulate and develop mines and minerals resides with the centre.<sup>33</sup>

In Jharkhand, both central and the state government collect revenue by imposing varied taxes and levies on minerals under different legislations. The primary source of revenue for the state government has been royalty, dead rent, water and labour welfare cess, sales tax, environmental protection fees, prospecting and mining lease fees. On the other hand, for the centre, the revenue collection happens in excise duty, forest conservation charges and corporate taxes. “Royalty” is a compensatory payment made to the owner of a property in lieu of allowing another to exploit that property.<sup>34</sup> Significantly, the Central government fixes the royalties payable to states on leasing such mineral rights as per Section IX of the MMDR Act.<sup>35</sup>

There has been a constant demand by mineral-producing states to revise royalty rates. However, of late, these demands are being made more frequently than before because mineral producing states find there is no match between the royalty provided to them and the gains earned by the centre in regulating and developing mineral resources and land.<sup>36</sup> This loss is accentuated by the fact that the centre rarely revises the royalty rates. For instance, in the case of coal, which accounts for one of the largest shares of royalty revenue for the state of Jharkhand, the royalty rates have been revised only four times between 1971-1973.<sup>37</sup> Since the nationalization of the sector, most coal-producing states like Jharkhand, Orissa and West Bengal have been particularly hard-hit due to the non-revision of these royalty rates. This non-revision has caused stagnation of revenue in many of these already backward states.<sup>38</sup> West Bengal too has claimed to have suffered huge losses of revenue due to the existing royalty regime prevalent in the country. Resultantly, West Bengal has levied a cess on its mineral-bearing lands through state

32. *Supra* note 29 at 53.

33. *Id.* at 54.

34. Indian Bureau of Mines, “Mineral Royalties” (Ministry of Mines, 2011).

35. Section 9(3) of the MMDR Act stipulates that 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.

36. *Supra* note 29 at 57.

37. Hemalata Rao, Devendra Babu, *et al*, “Economic and fiscal impact of royalty rates of coal and lignite in India.” (Institute for Social and Economic Change, 2003), available at: [https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/stry\\_coal.pdf](https://niti.gov.in/planningcommission.gov.in/docs/reports/sereport/ser/stry_coal.pdf) (last visited on Jan. 21, 2020).

38. *Id.* at 79.

legislation.<sup>39</sup> At present, West Bengal levies a cess at the rate of 25 percent per tonne on coal dispatched from the state. This makes the consolidated coal prices in West Bengal the highest in the country.<sup>40</sup> Thus, Jharkhand is not the first state to levy such a cess on mineral-bearing land; several other states also have done so to augment their revenue sources.<sup>41</sup>

The question of the constitutional validity of such state enactments levying cess on mineral-bearing lands has been brought before various courts from time to time. The judicial position on the issue has not been constant as courts have taken divergent positions at different points of time on whether to consider such a state-imposed cess on mineral-bearing land as unconstitutional or not.<sup>42</sup>

The constitutional validity of cess levied on mineral-bearing land was first discussed in *Hingir-Rampur Coal Co. v. State of Orissa*.<sup>43</sup> The case pertained to the validity of state legislation that empowered the state authorities to collect cess upon the value of mineral produced to provide certain amenities to mining areas. The state's contention was that it had the power to impose a cess on minerals by virtue of entry 50 of list II of the Constitution which permits states to impose taxes on mineral rights, provided such taxes did not breach any limitations imposed on the state by the parliament. The supreme court did not accept the contention of the state and found the state-imposed cess to be invalid and held:

“[...] that taxes on mineral rights are taxes on the right to extract minerals and not taxes on the minerals actually extracted. Thus, tax on mineral rights would be confined, for example, to taxes on leases of mineral rights and on premium or royalty for that, while taxes on the minerals actually extracted would be duties of excise. ... (cess in) the present case is not a tax on mineral rights; it is a tax on the minerals actually produced and can be no different in pith and substance from a tax on goods produced which comes under Entry 84 of List I, as duty of excise. The present levy therefore cannot be justified as a tax on mineral rights.”<sup>44</sup>

The issue concerning the imposition of state tax on mineral-bearing land once again came for judicial scrutiny in *H.R.S. Murthy v. Collector of Chittoor (H.R.S. Murthy)*.<sup>45</sup> The court, in this case, upheld the state's right to impose a land cess by stating that it was in essence, a 'tax on land' which would come under entry 49 of the state list.

It is to be noted that the supreme court again took a contrary stance on this particular issue in *India Cement Ltd. v. State of Tamil Nadu*.<sup>46</sup> The court, in this case, overruled the decision in *H.R.S. Murthy* and declared the cess to be beyond the legal powers of the state legislature by highlighting the distinction

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39. The Cess Act, 1880, (Act 9 of 1880). Also see the West Bengal Primary Education Act, 1973 (Act 42 of 1973), s. 78 and the West Bengal Rural Employment and Production Act, 1976 (Act 14 of 1976), s. 4.

40. Debjoy Sengupta, “Centre wants West Bengal to cut cess on coal, hike royalty”, *The Economic Times*, Aug. 23, 2016, available at: <https://economictimes.indiatimes.com/news/economy/policy/centre-wants-west-bengal-to-cut-cess-on-coal-hike-royalty/articleshow/53818563.cms> (last visited on Jan. 16, 2022).

41. The Cess Act 1880, the West Bengal Rural Employment and Production Act, 1976, the West Bengal Primary Education Act, 1973 and the Jharkhand Mineral Bearing Law (Covid-19 Pandemic) Act, 2020 empower state governments to determine the rate at which cess is payable to the government.

42. MP Ram Mohan and Shashikant Yadav, “Constitution, Supreme Court and the Regulation of Coal Sector in India”, 11 *NUJS Law Review* 1 (2018).

43. AIR 1961 SC 459.

44. *Id.* at para 53.

45. *H.R.S. Murthy v. Collector of Chittoor & Ors.*, AIR 1965 SC 177.

46. *India Cement Ltd. v. Union of India*, AIR 1990 SC 85.

between 'royalty' and 'land revenue'. Finding the approach taken by the court in *H.R.S. Murthy* was incorrect, the supreme court opined that as the cess in this context was not on land, but on royalty, it was beyond the competence of the state legislature to impose it. This was because the state's power to levy tax under this entry was subject to any limitations imposed by the parliament by a law relating to mineral development. It was held that by virtue of the MMDR Act, which the the parliament enacted under entry 54, list I, the state legislature was denuded of its power to levy any tax on minerals.

The supreme court's position on this issue was then tested in *Orissa Cement v. State of Orissa*<sup>47</sup> (*Orissa Cement*) wherein the court reiterated the findings of the *India Cement* case.<sup>48</sup> Here too the court opined that the imposition of a cess based on royalty was beyond the competence of the state legislature.

However, the supreme court deviated from its position in the *India Cement* case in *State of West Bengal v. Kesoram Industries and Ors.*<sup>49</sup> (*Kesoram Industries*). Upholding the constitutional validity of cess on royalty, the court, in this case, observed that "a legislation by the Union in the field covered by Entry 52 and 54 would not like magic touch or taboo denude the entire field forming the subject matter of the declarations to the State Legislatures and a denial to the State would extend only to the extent of the declaration made by the Parliament."<sup>50</sup> Furthermore, the court observed that "a state legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of 'regulation and control' belonging to the Central Government."<sup>51</sup>

Thus, it was observed by the court that, even if such a cess is assumed to be a tax on mineral rights, it would still be covered by entry 50, list II. Though the same lies within the legislative competence of the state legislature, it is subject to any limitations imposed by the parliament by law in the area and context of mineral development. Thus, it was noted in *Kesoram Industries* that, as the centre did not cast any limitations on the state legislature's power to tax mineral rights, it would be squarely within the competence of the state to levy the impugned cess under entries 49 and 50 of list II.<sup>52</sup>

The matter came before the supreme court once again in *Mineral Area Development Authority v. Steel Authorial of India*.<sup>53</sup> After hearing both sides, the three- judge-bench of the court concluded that there was a conflict between the apex court's decisions in *Kesoram Industries*,<sup>54</sup> delivered by a five-judge-bench and those of *India Cement Case*,<sup>55</sup> which was delivered by a seven-judge-bench. The matter was thereafter referred to a nine-judge- bench and is still *sub judice*.<sup>56</sup>

The above narrative shows that the Indian judiciary has taken contrary positions while dealing with the issue concerning states' power to levy 'cess' on mineral resources and mineral-bearing land. While in some instances the supreme court has ruled against such a state-imposed cess by calling it

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47. *Orissa Cement Ltd. and Ors. v. State of Orissa*, AIR 1991 SC 1676.

48. *Id.* at para 39.

49. *State of West Bengal v. Kesoram Industries and Ors.*, (2004) 10 SCC 201.

50. *Ibid.*

51. *Id.* at para 129.

52. *Id.* at para 130.

53. *Mineral Area Development Authority v. SAIL*, (2011) 4 SCC 450.

54. *Supra* note 48.

55. *Supra* note 46.

56. *Supra* note 42 at 20.

unconstitutional, reinforcing the union's supremacy over the states, it has upheld the state's right to legislate on the matter in other cases. Recent judicial decisions show that the supreme court has now started to take note of the difference between 'cess', 'royalty' and 'tax', and, consequently, to acknowledge that the state, because it is the owner of mineral resources, has the power to levy a reasonable cess on such resources.<sup>57</sup> These decisions could be seen to indicate a gradual shift in the judicial mindset when it comes to decisions concerning mineral resources. This shift could be seen to favour the federalist model over the unitary model by vesting states with appropriate taxing powers.

## Land Registration: A Controversial Bill in the Pipeline

Another important bill that got clearance from the state's cabinet in 2020, but was not tabled in the Assembly for further discussion, was the Jharkhand Land Mutation Bill, 2020. According to media reports, the bill was held back after facing criticism from within and outside the state government.<sup>58</sup> The state government stated that it would be tabled before the Assembly once all contentious points had been duly deliberated.<sup>59</sup>

The preamble of the proposed bill states that it seeks "to provide for regulating the process of mutation of land and making it concomitant with the needs of present time." Thus, there are provisions in the bill which provide for time-bound online mutation facility to the citizens. Furthermore, the officer concerned must provide reasons whether the action is not completed within the statutory time limit. Another provision of the bill provides legal sanctity to online documents. The supporters of the proposed bill claim that all of the aforementioned provisions would make the land registration process in the state more transparent. However, its critics believe that such legislation might become another tool for land-grab, especially for lands belonging to adivasis.<sup>60</sup> There have been numerous allegations that land records of adivasis in different districts of the state have been tampered with because a majority of the adivasi community do not have access to digital technology.<sup>61</sup>

Another contentious provision in the bill gives absolute impunity to any officer from civil, and criminal departments "for any act, thing or deed committed, or any word spoken by him when, or in the course of acting or performing any act in discharge of his official duties or functions." Such provisions in the proposed Bill can potentially alter the safeguards provided to adivasis under the Chhota Nagpur Tenancy Act, 1908, the Santhal Pargana Tenancy Act, 1949, the Forest Rights Act, 2006 and the Panchayat (Extension to Scheduled Areas) Act, 1996. So, notable tribal activists and leaders have opposed the proposed bill alleging that it can further marginalise tribal communities by having an adverse socio-economic and cultural impact on them.<sup>62</sup>

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57. *Ibid.*

58. Dhritiman Ray, "Under pressure, Hemant govt holds back land mutation", *Times of India*, Sep. 19, 2020, available at: <https://timesofindia.indiatimes.com/city/ranchi/under-pressure-hemant-govt-holds-back-land-mutation-bill/articleshow/78195317.cms> (last visited on Jan. 26, 2022).

59. *Ibid.*

60. Mahtab Alam, "Why is the Jharkhand Land Mutation Bill Being Opposed?", *The Wire*, Sep. 24, 2020, available at: <https://thewire.in/rights/jharkhand-land-mutation-bill-protest-advansi-rights-hemant-soren> (last visited on Jan. 30, 2022).

61. Sandeep Chaudhary, "Without Addressing Legacy Issues, Can Digitising Land Records in India Be a Game Changer?", *The Wire*, May 18, 2021, available at: <https://thewire.in/rights/land-digitisation-ulpin-land-records-legacy-digital-india> (last visited on Jan. 30, 2022).

62. *Supra* note 60.

## Resolution for a Separate ‘Sarna Code’ in Census 2021

In 2020, the Jharkhand legislative assembly passed a resolution to provide a separate ‘Sarna Code’ for tribals.<sup>63</sup> The resolution seeks to provide a special column for followers of the ‘Sarna’ religion in Census 2021. Currently, the census classifies people under six religions- Hindu, Muslim, Christian, Sikh, Jain and Buddhist. While filling in the columns, adivasi residents have to identify themselves as one of these or as ‘others’, but cannot specify their religion as a different one. It is to be noted that ‘Sarna’ followers are nature worshippers who do not consider themselves Hindus and have fought for a separate religious identity for decades.<sup>64</sup> Tribal leaders and activists have hailed the state government’s resolution for a separate Sarna code by claiming that subsuming adivasi belief in the ‘other’ category erodes their distinct identity.<sup>65</sup>

Data from existing census records suggest that the tribal population in Jharkhand was reduced by 12 percent in the last eight decades. Records suggest that, compared to the state’s total population, the adivasi population has decreased from 38.03 percent in 1931 to 26.02 percent in 2011.<sup>66</sup> The state government has claimed that such a decline in the population of tribals has a negative impact on the constitutional provisions and policies framed to benefit them.<sup>67</sup> It is to be noted that the Constitution of India envisages special provisions given to tribal communities under schedule V of the Constitution. Moreover, identifying which area would come under schedule V is dependent on the tribal population of that particular area. In 2019, there were demands to exclude those areas from the purview of schedule V areas where the tribal population had declined.<sup>68</sup> The state government passed the aforementioned resolution to address such concerns. Experts claim that recognition of adivasi ‘Sarna code’ would address this issue and acknowledge the unique religious identity of tribals.<sup>69</sup>

Lastly, it needs to be pointed out that the entry relating to census is included in entry 69 of the union list of schedule VII of the Constitution. Thus, as per the constitutional framework, the state could do no more than pass a resolution to usher in positive reform in this matter because it does not have the power to legislate on the specific subject matter. By passing the resolution however, the state has declared its political affiliations and lent its moral support to the cause of the adivasis.

## Conclusion

The state’s legislative activity in 2020 was restricted due to the ongoing pandemic and the prevailing lockdown conditions. This analysis of the legislative performance of the state shows that there was no

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63. Mukesh Ranjan, “Jharkhand Assembly passes resolution on ‘Sarna Code’”, *The New Indian Express*, Nov. 11, 2020, available at: <https://www.newindianexpress.com/nation/2020/nov/11/jharkhand-assembly-passes-resolution-on-sarna-code-2222467.html> (last visited on Feb. 02, 2022).

64. “Sarna code: More than just a political tactic”, *Sabrangindia*, Oct. 30, 2020, available at: <https://sabrangindia.in/article/sarna-code-more-just-political-tactic> (last visited on Feb. 02, 2022).

65. Nandini Tank, “Act of Faith: The growing demand for recognition of the Sarna religion in Jharkhand”, *The Caravan*, April 1, 2021, available at: <https://caravanmagazine.in/religion/growing-demand-recognition-sarna-religion-jharkhand> (last visited on Feb. 18, 2022).

66. Ishan Kukreti, “Jharkhand Assembly passes resolution for separate identity code for tribals”, *Down To Earth*, Nov. 11, 2020, available at: <https://www.downtoearth.org.in/news/governance/jharkhand-assembly-passes-resolution-for-separate-identity-code-for-tribals-74189> (last visited on Feb. 2, 2022).

67. *Ibid.*

68. *Supra* note 66.

69. *Supra* note 65.

detailed scrutiny of any bill passed in 2020. The state legislature showed reluctance to constitute any subject-specific select committees even when demands were raised for the same. All bills were passed on the same day they were introduced.

An examination into the nature of legislations enacted in 2020 shows that the majority of these legislations were brought about to augment the state's revenue receipts, which was facing a resource crunch due to the enormous COVID-19 expenditures being incurred by it. The controversy around the cess on minerals, which the states ostensibly own, but can in no way profit from, foregrounds one of the critical problems of Indian federalism in which states rich in natural resources are developmentally poor as their interests have not been adequately prioritized, when distribution of resources is undertaken.

There are some critical bills concerning land registration and religion in the pipelines of the state legislature. If passed, these could have a significant impact on the tribal population of the state.