8.1 Introduction

As has been documented in previous chapters of this thesis, conflicts between local communities and mining companies are increasing in frequency as well as intensity in different locations across the country. One of the most important and potent instruments available to members of such communities to address their grievances can be located within the Indian jurisprudence. In fact, it already contains various elements that can extend legitimacy to the struggles of these communities to secure social and environmental justice. The regulatory framework that includes not just the constitutional and legislative provisions but also the case laws\(^{82}\) have evolved over the years to provide a space for raising and addressing concerns of the communities involved in ecological distribution conflicts, if not securing them justice.

The next section identifies the legal provisions that govern inclusion/exclusion of local communities in the decision-making over the various aspects of mineral extraction in India. The third section presents a brief analysis of major environmental justice struggles and social resistance movements that have resulted in progressive legislative amendments and regulatory reforms in this sphere. The subsequent section presents the conceptual foundations for a Radical Mineral Democracy, and proposes some of its foundational principles, procedures and practices. The fifth section concludes the chapter.

8.2 Major Laws and principles governing social inclusion of local communities in decision-making

In recognition of the scale of impacts of mining activities on local communities, Indian Constitution and legislations contains various provisions to safeguard

\(^{82}\)In accordance with Article 141 of the Indian constitution, judgments passed by the Supreme Court become binding across the country.

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their rights against extractive industries. The provisions take cognizance of many things which can potentially impact the local communities residing at spaces that can be categorized as frontiers of commodity extraction socially, politically, economically, environmentally and culturally. These provisions can potentially safeguard the interests of local communities by way of extending a legal space, vis-à-vis mineral extractivism, even against powerful economic interests. This section explores some of the relevant legislative provisions and jurisprudential developments in this area.

8.2.1 Constitution and Laws

There already exists a number of progressive legal provisions—say, on inclusion of local residents/actors in the decision-making process—pertaining to mineral sector in India. Before delineating a set of possible amendments in the regulatory framework to minimize if not eliminate the impacts on the local communities in commodity frontiers (section 8.4) it may be prudent to examine what already exists in terms of potentials and limitations.

8.2.1.1 Schedules V and VI of the Constitution of India

The Fifth and the Sixth Schedules of the Indian Constitution grant rights to land historically occupied by the adivasi communities. The latter applies to the North-eastern region of India, whereas the former is relevant for the rest of India. Importance of these Schedules owes to the strong correlation between the locations of mines and the spaces inhabited by adivasi communities all across India, the strongest being in the Central India.

8.2.1.2 Panchayat (Extension to Scheduled Areas) Act, 1996

The Panchayat (Extension to Scheduled Areas) (PESA) Act empowers communities to have a say in decision making with respect to the land-use pattern in the spaces occupied by them. It mandates organization of public hearings before any project is granted permission to begin operations that involved land use changes. Additionally, it mandates obtaining the due clearance from the Gram Sabhas (the village assemblies) that permits such a change.83 Among others, the

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83 Section 4 (k) makes it mandatory to consult the Gram Sabha or the Panchayats before acquiring land for development projects in the Scheduled Areas and also before the associated re-settlement and rehabilitation of project affected persons.

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PESA enables villages to self-govern in keeping with the local customs, culture and traditions. It prevents State legislatures from making any law which may be inconsistent with such “customary law, social and religious practices and traditional management practices of community resources”. Further, it grants inalienable rights over the land in Scheduled Areas to the adivasi communities and vests considerable powers with the Panchayats and Gram Sabhas with necessary powers, for instance to “take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe”.

However, implementation of this progressive law has been short of expectations: 15 years have passed – only three states from nine have made the rules for this. PESA has an important clause saying gram sabhas must be convened. I’d said these should be video-recorded and held on fixed days. Such local-level decisions increase transparency and reduce corruption. It’s the only way every person feels part of the process of development and governance. But each state is responsible for implementation – and it’s not as it should have been. (TOI, 2013).

It follows that progressive provisions of PESA are still to be exploited which can contribute significantly towards implementation of post-growth pathways in India.

**8.2.1.3 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 commonly known as the Forest Rights Act (FRA) was notified with effect from the last day of 2007. Its stated objective is to “recognize and vest rights for habitation and occupation in forest land for forest dwelling Scheduled Tribes (STs) as well as Other traditional forest dwellers (OTFDs) who have been residing in such forests for generations but whose rights could not be recorded”. This is stated to be an enabling legislation with an intent to make up for the ”historical injustice to the forest dwelling Scheduled Tribes and other

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84 Section 4 (a)
85 Section 4, m. (iii), (iv).
traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.”87

Like PESA, FRA too is a potentially powerful tool which can be employed by the *adivasi* populations to influence the decision-making regarding extractivism on land occupied by them.

FRA also allow members of *adivasi* communities to obtain individual as well collective heritable rights to land within forests to collect minor forest produce88 which is essential for their ways of living.89

These rights are inalienable besides being non-transferrable to people outside the tribe but heritable.90 It also allows for recognition and preservation of ways of living of *adivasi* communities, by granting rights to traditionally practices customs and access to natural resources. This includes rights to practice and preserve traditional socioeconomic activities, and means of livelihood generation.91

Additionally, the Act provides for establishment of various facilities by the Central government such as dispensaries, aanganwadis, fair price shops, etc. for the benefit of *adivasi* communities. These are to undertaken subject to the condition that each project utilizes less than one hectare of land, and that clearance of each projects is recommended by the Gram Sabha.92

Despite of this forward looking and progressive Act, there have been various issues regarding efficient and appropriate implementation of its provisions around the country. One significant issue is that the people and communities who are empowered under the FRA, commonly do not have information, awareness, and resources. Addressing this shortfall through spreading awareness to the relevant population, and aiding its implementation FRA by responsible

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88 Section 3. 1 (a) states that forest dwellers on all forest lands have the [...] right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers.
89 FRA confers the “right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries” (Section 3. 1 (c)).
90 Section 4.4.
91 Section 3. 1 (j), (k), (l), (m)
92 Section 3.2. (m, i, ii)
government agencies can contribute significantly towards ensuring the objectives of the Act.

**8.2.2 Principles**

Two significant jurisprudential principles with respect to rights of local communities around mining are the Public Trust Doctrine and the Precautionary Principle both being recognized by the highest judiciary in India.

**8.2.2.1 Public trust Doctrine**

The public trust doctrine was first cited in the case of M. C. Mehta v Kamal Nath and others, by the Supreme Court. The Public Trust Doctrine is significant with respect to mineral extractivism in India, primarily due to three reasons:

a) It implies that the property which is subject to public trust must be protected, and made available for use by the general public and be utilized only for a public purpose. As such, ecosystems considered as common heritage need to be protected by the State. This is especially relevant given the location of many major minerals, such as iron ore, bauxite and limestone under dense forest covers.

b) It implies that, for the minerals under State control, the value of minerals needs to be extracted to the fullest, in order to ensure current generations are not deprived of by the private agents. As such, when resources are

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93 In the case of M.C. Mehta v. Kamal Nath and ors. the ruling stated that:

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would be unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. (WP(C) 182 of 1996).

94 In the case of M.C. Mehta v. Kamal Nath and ors. the ruling stated that:

[...] the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust. (WP(C) 182 of 1996, 11).

95 In the case of Meerut Development Agency v. Association of Management, the Supreme Court ruling stated:

Whenever the Government or the authorities get less than the full value of the asset, the country is being cheated; there is a simple
extracted, the State is under obligation to extract value of minerals under its control to the largest possible extent.

c) It implies that the resources which are under the control of the State need to also account for either direct utility, or indirect transfer of benefits for utilization by future generations. The value of resources extracted need to be utilized in a manner that takes into account the implications on future generations. As such, the State needs to take into account inter-generational equity concerns related specially to non-renewable resources.

8.2.2.2 Precautionary Principle

The Precautionary Principle broadly postulates that in the event of uncertainty of negative environmental implications of projects, it is preferable to not to disallow the project. This implies that in the case of an uncertain possibility of negative environmental consequences, it is essential to take preventive action even if the impacts or the intensity of impacts cannot be proven. The precautionary principle states that “when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically” (Kriebel et al., 2001, p. 871).

The first reference to the Precautionary Principle in judicial decisions in India appears in the Vellore Citizens Welfare Forum v. Union of India. Here, the Supreme Court referred to the Brundtland Report, other international documents, and to Articles 21, 48A and 51A(g) of the Indian Constitution stating:

transfer of wealth from the citizens as a whole to whoever gets the assets ‘at a discount’. Most of the times the wealth of a State goes to the individuals within the country rather than to multi-national corporations; still, wealth slips away that ought to belong to the nation as a whole. (CA. No. 2619 of 2009, 27).

96 In Fomento Resorts & Hotels & Anr vs Minguel Martins & Ors, the Supreme Court ruling stated:

[...] natural resources including forests, water bodies, rivers, sea shores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. (CA Nos.4155 and 4156 of 2000, 40).
“we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country” (Writ Petition (civil) No. 914 of 1991).

The constituents of this principle are significant with respect to mineral extraction given the scales of operations and the processes of mining, which result in large scale environmental degradation. For the possibility of the mining sites to degrade ecosystems, destroy wildlife corridors and create air and water pollution, this principle can be effectively utilized by potentially affected communities to resist extractive projects in legal terms.

8.3 The role of social mobilization in struggles for environmental justice: A review of five emblematic cases relating to access and rights to minerals in India

This section discusses some of the major successful cases of environmental justice struggles in the mining sector in India and the positive contributions that these judgments have made in the jurisprudence concerning mines and mineral extractions.

8.3.1 Samatha v. State of Andhra Pradesh (1997)
In 1987, Aditya Birla groups’ Birla Periclase began calcite mining operations in the largely adivasi village of Nimmalapadu in Andhra Pradesh (Bhushana and Juneja, 2012; Sha and Patra, 2014). Soon villagers in the regions were offered 5000 INR per family by the revenue officials and asked to vacate the area in order to expand mining operations. Continual mining operations would have led to the displacement of the entire adivasi population of the village (Bushan and Juneja, 2012). In order to prevent the displacement from and dispossession of land, and

97The precautionary principle comprises four central components: a) anticipatory action and taking preventive action in the face of uncertainty; b) shifting the burden of proof to the proponents of an activity; c) exploring a wide range of alternatives to possibly harmful actions and selection of least harmful alternative; d) full cost accounting of all possible damages at each stage of project; e) complete and accurate information regarding potential risks provided to potentially affected communities; and f) increasing public participation in decision making (Kriebel et al., 2001).
livelihood sustaining resource base, the villagers began a struggle against the one of India’s largest business houses, and the Andhra Pradesh government. Backed by the Hyderabad based advocacy and social action group Samatha, villagers organized a massive social resistance movement which lasted for a decade. A case was filed to this effect by Samatha in the Andhra Pradesh High Court which the villagers lost in 1995. The NGO then took the matter to the Supreme Court, and finally received a favourable judgment in 1997, commonly termed as the Samatha Judgment.

As per the Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959, and its 1971 amendment, the transfer of adivasi land to non-adivasi people was illegal. In the judgment, the Supreme Court held that, as per the Indian Constitution, Scheduled Areas in a state represent a distinct category of land. In such lands and forests, residents have specific social, traditional, and environmental interests and rights to local ecosystems, which need to be protected by the legislature (Writ Petition Nos. 9513 of 1993 and 7725 of 1994, p. 769).

Further, the Prime Minister of India was directed by the Supreme Court to convene a meeting of all relevant ministers in order to develop a national scheme, which would be applicable to all adivasi lands throughout India, based on the guidelines laid down in the judgment. As a response, the central government, as well as several state governments appealed to the Supreme Court to amend the judgment. The purpose was to reinstate powers of state governments to grant leases to private mining companies on adivasi lands. This appeal was dismissed by the Supreme Court.

With respect to rights of forest dwellers on local ecosystems, three major trends in Indian jurisprudence can be identified from this landmark judgment. The first deals with livelihood related rights of forest dwellers’—which in the Samatha judgment were held to be of primary concern. This has resulted in limiting powers of state governments in the exploitation of mineral resources in Scheduled Areas. The second reflects environmental concerns of the judiciary, and in particular on the direct impacts of environmental and ecological degradation on forest dwellers' livelihood and incomes. This is reflected in the emphasis on the importance of maintaining and sustaining the carrying capacity of forests, and to preserve forest
wealth from industrial depredation. The third is the emphasis on the accountability of state governments and other agencies to avoid adverse impacts on people who depend on forests for their livelihood and socio-cultural identity. It was held that in cases where such negative impacts are inevitable, every effort should be taken, to utilize resources to enhance the livelihood and social status of such people even at the expense of industrial and development projects (Perera, 2014). The judgment also held that if mining operations are to take place in Scheduled Areas, this can be undertaken only by government agencies and at least 20% of net profits are to be diverted into ‘Permanent Funds’ to cater to local needs of mining affected communities. The 2015 amendment to the MMDR Act (1957) reflected these directives of the principles of profit sharing (Bushan and Juneja, 2012). We will return to this matter below.

8.3.2 Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh
The case of Rural Litigation and Entitlement Kendra, Dehradun v. State of UP or the Dehradun Valley case is emblematic in that it was the first case that required the Supreme Court to intervene in the debate around balance of ecological preservation against industrial needs on forest resources (Divan and Rosencranz, 2001). The region has high grade limestone deposits with 99.8% sodium carbonate. Unscientific, haphazard, and dangerous limestone mining activities were being carried out in the Mussorie Hill range of the Himalayas in the Doon valley in the decade between 1955 and 1965. This included blasting of hills using dynamite over thousands of acres of densely forested lands. The mines reached deep into hills resulting in slumping and cave-ins. This resulted in stopping of the green forest cover, and increased occurrences of landslides affected villagers residing in downhill regions (Writ Petition (Civil) Nos. 8209 and 8821 of 1983).

Landslides resulted in destruction of homes and agricultural lands, as well as in the death of villagers, cattle and other livestock. Despite these impacts, and the resultant protests by villagers, in 1962, mining leases were granted renewal for 20 year periods. By the early 1980s, in addition to losing green cover and hence aesthetics, the region had become prone to common occurrence of extreme events such as landslides, flash floods, water shortages, and rising temperature. When the mining leases came up for renewal in 1982, half of 18 existing mining leases
were allowed to continue operations. Against this renewal, the Rural Litigation and Entitlement Kendra, Dehra Dun (RLEK), in 1985 filed a Public Interest Litigation (PIL) in the Supreme Court.

The Supreme Court appointed a committee under the chairmanship of Shri D. N. Bhargawa in order to inspect the mines, to determine whether the safety standards set under the Mines Act, 1952 and the Metalliferous Mines Regulations, 1961 were being respected and to determine whether there was higher chances of landslides in the region due to quarrying operations. Based upon the recommendations of the Committee all but 3 mines were ordered to cease operations. With regard to the question of whether mining should totally be stopped, phased out slowly, or allowed in a regulated manner, the Supreme Court stated that:

[...] mining in this area has to be stopped but instead of outright closing down total mining operations we were of the view that mining activity may have to be permitted to the extent it was necessary in the interest of defense of the country as also by way of the safe-guarding of the foreign exchange position [...]. (Writ Petition (Civil) Nos. 8209 and 8821 of 1983, p. 719).

With regard to sudden ban versus phasing out operations, the court ruled: “the position should be monitored and the switch-over from the present position to a total ban should be spread over a period and not be sudden” (ibid., 3.4, p. 724).

Another major outcome of the litigation was that after this ruling, the Doon Valley was declared as an ecologically fragile area under the Environment Protection Act by the Central government (Pati, 2012).

8.3.3 Goa Foundation v. Union of India and ors.

The EDC related to iron ore mining, and the subsequent Supreme Court ruling in the case of Goa has been considered in detail in Chapter 6. Hence, here we focus on one of the major outcomes of the case which was the setting up of ‘resource caps’ in Goa. The court ordered a yearly cap of 20 MT based upon two primary conditions: the carrying capacity of the existing infrastructure in the state, and on the biological carrying capacity of the fragile Western Ghats ecosystem which is a biodiversity hotspot. The judgment states that:

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[...] the State Government will, in the interests of sustainable development and intergenerational equity, permit a maximum annual excavation of 20 million MT from the mining leases in the State of Goa other than from dumps. (WP (C) 435 OF 2012, p.108).

The judgment also addresses the issue of redistribution of value of mineral acquired by the mining companies, which was one of the major causes of the EDC, ruling that, “henceforth, the mining lessees of iron ore will have to pay 10% of the sale price of the iron ore sold by them to the Goan Iron Ore Permanent Fund” (WP (C) 435 OF 2012, p. 109).

The resource cap implemented in Goa is significant because it is the first of its kind judgment with respect to regulation of major minerals in India. It has the potential to set a precedent with respect to the regulation of other major minerals covered under the Mines and Minerals (Development and Regulation) Act post 2015 ordinance.

8.3.4 Common cause v. Union of India

The EDC surrounding iron ore mining in Odisha and the related Supreme Court judgment has been explored in detail in Chapter 5 of this thesis. Hence we will consider only those aspects which are relevant to policy.

This case resulted in the arrest of various parties involved in illegal mining operations, as well as the temporary closure of a number of mining leases within the iron ore mining belt of the state. With regard to the issue of illegality in extraction and redistribution of funds, the ruling mandated the payment of separately determined sums of money by mining leaseholders before resuming operations:

[...] the amounts determined as due from all the mining lease holders should be deposited by them on or before 31st December, 2017. Subject to W.P. (C) Nos. 114/2014 etc. and only after compliance with statutory requirements and full payment of compensation and other dues, the mining lease holders can re-start their mining operations. (WP(C) 114 of 2014, 225).
Through this ruling the Supreme Court had directed the Central Government of India to review the National Mineral Policy, 2008 “with regard to conservation and mineral development” by the end of 2017 (WP(C) 114 of 2014).

One of the other major outcome of this case was setting up of mechanisms to ensure transparency in mining operations.

8.3.5 Odisha Mining Corporation v. MOEF and Ors.

The case of Vedanta mining corporation and the Dongria Kond adivasis in the Niyamgiri range of Odisha was discussed in Chapter 2. Through this judgment, the Supreme Court has set a new precedent on the matter of recognition of cultural rights of people over natural resources and constitutional rights to practice religious freedom by all communities and citizens of India (W. P. (C) 180/2011, p. 55). Drawing from FRA, 2006 and PESA, 1996, in its 2011 judgement, the final judgment handed over the decision regarding the proposed mining operations to the 12 Gram Sabhas of the villages in the Niyamgiri range:

[...] the question whether [...] Dongaria Kondh, Kutia Kandha and others, have got any religious rights i.e. rights of worship over the Niyamgiri hills [...] have to be considered by the Gram Sabha. Gram Sabha can also examine whether the proposed mining area Niyama Danger, 10 km away from the peak, would in any way affect the abode of Niyam-Raja. Needless to say, if the BMP [Bauxite Mining Project], in any way, affects their religious rights, especially their right to worship their deity...that right has to be preserved and protected. (W. P. (C) 180/2011, p. 58).

In 2013, all 12 Gram Sabhas unanimously voted against permitting mining operations in the region—a decision which was held by the Supreme Court of India. It is widely expected that this judgment will have significant consequences for the EDCs around mineral extraction not just across India but elsewhere too.
8.4 Towards Radical Mineral Democracy: A guiding framework based upon principles of post-extractivism

In India, the overarching regulatory framework for the mines and minerals follows from the Mines and Minerals (Development and Regulation) Act 1957 (MMDR). The Mines and Minerals (Development and Regulation) Amendment Ordinance has come to force in 2015. The period in between has witnessed the following developments in this sector.

a) In 2005 a High Level Committee was set up to "recommend possible amendments to the Mines and Minerals Development and Regulation (MMDR) Act, 1957" ostensibly to "suggest the changes needed for encouraging investment in public and private sector in exploration and exploitation of minerals " (p. 222) with Anwarul Hoda, then a member of Planning Commission as its Chair. As per the Terms of Reference the Committee was to make suggestions towards various elements to this end, ranging from ways to "speeding" the procedure for seeking licence for explorations to facilitating investment towards "critical infrastructure" needs in this sector. Interestingly, the Committee was also to consider making "value addition within [...]a state" as a "condition for grant of mineral concession" in the mineral rich States and to examine its implications. Though the adverse effects of the functioning of this sector on the local environment and its people did not feature in the Terms of Reference the report included some of the matters in the context of environmental justice. Some of them are considered here.

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99 It was amended earlier in 1972, 1988, 1994 and again in 1999. The first, among others, included 'dead rent' in the Act. The second made approval of 'mining plan' necessary. Special privileges were granted to the Public Sector Undertakings in this sector through the amendments which reflected the broader macroeconomic policy and outlook. National Mineral Policy of 1993 as a part of 'economic reform' reversed such 'reservations'. The 1994 amendment followed from it—geared towards attracting investments in this sector including foreign direct investment so as to bring 'modern' technology. However, the effects were far from expected, prompting the Government to establish a Committee to inquire into the reasons. The Committee had made a number of suggestions. The last amendment followed the suggestions. All reflected the 'liberalisation' of the sector towards incentivising private investment through 'ease of license'.
First, decision making regarding operation of mines is to be undertaken through a democratic-decision making process which would include the assessment of ecological, environmental, social and economic impacts of mining on local populations.\textsuperscript{100}  
Second, cultural ecosystem values and significance of commons is to be taken into account in decision making.\textsuperscript{101}  
Third, emphasis be laid on improving the capacities of local government and institution so as to enable efficient redistribution of value of mineral extraction to local communities through governmental agencies, rather than companies taking on such roles.\textsuperscript{102}  
With regard to relief and rehabilitation (R&R), it recommended that long-term well-being of communities that have been resettled needs to be defined and monitored.\textsuperscript{103} The committee took a cue from some of the provisions of the R&R packages offered to Project Affected Persons (PAPs) in the states of Odisha, Andhra Pradesh, and Chhattisgarh. One significant and common principle in each of these models is to minimize or avoid displacement to the extent possible. Finally, with respect to royalty rates, it recommended switching from a tonnage based to an \textit{ad valorem} royalty system, which is commonly used internationally.\textsuperscript{104}  

\textbf{b) The National Mineral Policy (NMP) was first introduced in 1993 and provided an outline for governing the extraction and management of minerals. Following the recommendations of the High Level Committee, the NMP was revised in}

\textsuperscript{100} See section 3.4 (p, 67 and 68).  
\textsuperscript{101}“In making decisions, the cultural circumstances of the local people and loss of access to common resources should be kept in mind.” (p, 69).  
\textsuperscript{102} “[...] the focus should be on improving the capacity of the local government and other local institutions to provide the benefits from mining instead of the companies themselves seeking to take on governmental functions.” (p, 69).  
\textsuperscript{103} “It is not only a question of providing jobs or financial assistance for opening shops and plots and some funds for making houses, etc. Where resettlement takes place, companies are required to ensure that living standards are not diminished, that community and social ties are preserved, and that they provide fair compensation for loss of assets and economic opportunity.” (p, 75).  
\textsuperscript{104} Since the \textit{ad valorem} system would imply levying royalties in proportion to the estimated value of the minerals extracted, it would “have the basic advantage of providing buoyancy to revenues in line with rises in the price of minerals. The system also has the advantage that the rates are price neutral and unaffected by its rise or fall.” (p, 123).
In broad terms it reflected the recommendations towards the encouragement of private investment, including FDI, for attracting state-of-art technology in the mineral sector, and for exploitation of minerals guided by long-term national goals and perspectives that are dynamic and responsive to the changing global economic scenario.

With regard to the environmental justice aspects covered in this thesis, and in line with the recommendations of the High Level Committee, the NMP 2008, recognized the importance of consideration of interests of local communities, and integration of their voice in decision making stating: “all measures proposed to be taken will be formulated with the active participation of the affected persons, rather than externally imposed”. It also acknowledged the necessity to consider the multiple dimensions of social, ecological, economic and environmental impacts of mining operations on local communities.

The MMDR bill was introduced in the Parliament in 2011 in order to amend the original MMDR Act (1957). The bill introduced regulations and guidelines aimed at reforming the mining sector towards sustainable mining and local area development. It also focused on the inclusion of benefit sharing mechanisms for mining affected people and communities. Further, it included several recommendations for regulations aimed at ensuring transparency, equity, elimination of discretions, effective and regulatory mechanisms along with incentives encouraging good mining practices. The MMDR bill has been acknowledged, among other activists, NGOs, and scholars, by Bhushan and Banerjee (2015), as containing several recommendations which could have been transformative with respect to integration of local interests as well as ecological preservation: “We believe that the MMDR Bill 2011 made an attempt to balance all concerns. There were lacunae in it but it recognised the need to incorporate community interests and environmental protection” (Bushan and Banerjee, 2015). However, this bill was allowed to lapse in 2014, and was replaced by the MMDRAO, 2015. This ordinance, although introduced regulatory reforms in the mining sector, has several shortcomings with regard to enhancing community

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105 This was further revised in 2016.
106 See section 2.3.
107 Section 7.11
108 See section 7.10.
109 See section 7.11.
integration and ecological preservation, compared against the 2011 bill. Relevant recommendations from this bill have been referred to while making our own recommendations below (8.4.5).

d) The report of the Standing Committee on the Mines and Minerals (Development and Regulation) Bill, 2011 contain some important recommendation from the perspective of this thesis. Some of which are considered here.

First, with respect to inclusion of local communities in decision making, it emphasized the need to incorporate provisions in the existing mining legislation in order to create, activate and empower institutional mechanisms for involvement of local people in decision making regarding mining operations. It also recommended the inclusion of local communities through mandatory consultation with the Gram Sabhas with respect to any mining projects in local areas. Second, with regard to the alternatives to large scale corporate/company owned mining operations the report recommends the enabling of “registered co-operatives for obtaining mineral concessions on small deposits in order to encourage tribals and small miners to enter into mining activities”.

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110 Section 1.8 states:

[...] socioeconomic issues of tribal and remote communities which inter-alia include perceptions about displacement, control of area by outsiders, economic isolation, environmental degradation and loss of livelihood and habitat, have come into focus, articulated through various means as constituting alienation and loss of identity. There is a felt need to incorporate provisions in the mining legislation enabling creation, activation and empowerment of institutional mechanisms for involvement of the local people, especially the tribal and under privileged communities, in the development of mineral resources through creation of stakeholder rights. (p, 13).

111 Chapter II, Clause 2.6 recommends:

While observing that under Panchayat (Extension to Schedule Areas (PESA), Act, 1996, one of the powers given to Gram Sabha is that prior recommendation of the Gram Sabha is required when a prospecting licence or licence for mine and mineral as well as concession for mine and mineral are given, the Committee have been given to understand that the Ministry of Panchayati Raj have put up a Cabinet Note for amending the PESA Act itself to make the recommendation of the Gram Sabha as mandatory. Although, the Ministry of Mines have admitted that 'consultation' as defined in the PESA, 23 Act, 1996 would be acceptable to them, the Committee desire that the term 'consultation' should be read as an effective consultation. The Committee desire that views of Gram Sabha should not be lightly ignored into. (p, 22, 23).

112 Section 1.12.3.h, p. 14
regard to redistribution of value of minerals extracted, the report recommended the institutionalization of District Mineral Funds.\textsuperscript{113}

Arguably, the MMDRAO, 2015 has been designed to “eliminate discretion in the grant of mineral concessions, bring in transparency in the allocation of mineral resources, simplify procedures and remove delays in decision making, provide impetus to the mining sector, encourage exploration and investment, safeguard interest of affected persons and develop stronger provisions to check illegal mining” (Bhushan and Banerjee, 2015, p. 5). However, the Act largely focuses on enhancing ease of mining operations, rather than on reducing environmental and social externalities thereof.

As has been argued earlier in this thesis, mining sector in India has been broadly plagued by two major issues: first is the illegality of operations ranging from opaqueness of procedures for granting concessions and corruption both yielding large windfall gains for mining companies; and second is the adverse social and environmental impacts of such operations on local ecosystems and people dependent upon them for lives and livelihoods. The MMDRAO, 2015 while makes an attempt to address the first, it largely ignores the second. This was not the case in the MMDR 2011 bill. For the purpose of this thesis, based upon the post-extractive framework proposed in Chapter 7, policy recommendations on the following five criteria have been made in general with regard to mining sector and with reference to the MMDRAO, 2015:

1. Increased integration of local communities into decision making process
2. Downscaling extraction
3. Increased capture of windfall profits of mining companies and redistribution of wealth obtained from mineral extraction
4. Increased transparency and accountability by improving regulatory and facilitative institutions

As noted earlier, The MMDR bill, 2011 addressed various environmental and social issues. This makes it fit well within the framework of post-extractivism. To reiterate, many recommendations of the MMDR bill, 2011 can be useful in

\textsuperscript{113} Chapter-X (p, 117-121).
attempting to institutionalize changes within the MMDRAO, 2015, and to recommend pathways towards what can be conceptualized as a Radical Mineral Democracy (RMD) applicable for resource peripheries within India.

The notion of RMD has been derived from Ashish Kothari’s notion of a Radical Ecological Democracy (RED), and essentially has similar underpinnings. RED is described as a “new framework [which] places the goals of direct democracy, local and bioregional economies, cultural diversity, human well-being, and ecological resilience at the core of its vision” (Kothari, 2015). As such, an RMD suggests a move towards mineral regulation in India which would enhance participation of local communities in decision-making with respect to mining operations in their local spaces, and take into account concerns of environmental degradation from a wider lens—esthetic, sustenance based, and cultural. Drawing from an understanding of post-extractivism (detailed in Chapter 7), some principles, procedures and practices are recommended for moving towards such a state in India. They draw from the following: a) MMDRAO, 2015; b) Supreme Court judgments analyzed earlier in the chapter; and c) the post-growth framework proposed in Chapter 7.

Using recommendations of the post-extractive framework proposed in Chapter 7, and some shortcomings in the MMDRAO, 2015, five broad proposals which could initiate a move towards RMD have been discussed below. For each, specific shortcoming in the MMDRAO, 2015 with respect to the different proposals are explored, and potential alternatives and replacements suggested. Finally, some steps which could serve as an outline for operationalization of RMD based upon the existing and legislative framework governing the mineral sector in India have been delineated. It is to be noted that this is by no means an exhaustive list. There is scope for further development.

8.4.1 Inclusion of local communities: Since local communities are exposed, to a high degree, to the negative impacts of mineral extraction, it is important that they be included in decision making regarding mining operations proposed in their areas of residence. This includes, but is not limited to, decision making regarding beginning of operations as well as expansion of existing operations. The issue of inclusion of local communities has received much attention in the past and several legislative provisions have been taken to ensure this. Acts such as the
FRA, 2006, PESA, 1996 are major steps in this direction. Here, two major recommendations to the MMDRAO, 2015 are suggested with regard to this matter:

a) The Act post 2015 amendment does not have the provision of compensation, rehabilitation and resettlement of persons having usufruct and traditional rights over land and resources. This was present in the 2011 Bill. Currently all compensation, rehabilitation and resettlement is limited to occupational rights, similar to 1957 Act. The inclusion of these rights would be a step forward in acknowledging and recognizing cultural, aesthetic and other non-monetary ecosystem services that local communities derive from local ecosystems. As such it is recommended that the recognition of usufructual and traditional rights of local communities over ecosystems be introduced into the MMDR, 2015. This is linked to post-extractive proposal 5.2 discussed in the previous chapter.

b) The MMDR, 2015 institutionalized the creation of a District Mineral Foundation (DMF) to be established by state governments in order to finance livelihood, employment, development, environmental restoration or compensation of ecosystem services etc. for people and communities affected by mining operations. Discussions with local lawyers, activists and citizens during field work conducted in Odisha revealed a general sense of resentment with regard to both the composition of DMFs as well as with the management of the funds therein. One major reason cited by them was the absence of any procedure for consultations with local affected communities with regard to the utilization of funds. Further, there are no provisions for the inclusion of local people, activists, or members of civil society in the committees which manage the DMFs. As such, it is recommended that there be detailed guidelines on the composition of DMF, which would include local community members. Further, procedures for consultation with local affected communities with regard to utilization of funds is recommended. These recommendations are linked to post-extractive proposals 5.3 and 5.4 discussed in the previous chapter.
8.4.2 Downscaling extraction: This recommendation is linked to post-extractive proposal 5.6. Based upon the Public Trust Doctrine and the principles of intergenerational equity, it is desirable to downscale extraction for three major reasons. Firstly, it could be helpful in making the implementation of existing regulations more manageable. Further, this can also allow for more manageable restoration of exhausted mines. Secondly, this would extend the time period over which benefits of resources can be extracted. This is especially relevant in the case of non-renewable or exhaustible resources for the obvious implication on inter-generational equity. Thirdly, fixing specific extraction levels can act as a cushion against global commodity market fluctuations. It is these price movements that result in mining booms and have been found to be associated with increase in illegality of mining operations.

Whereas the MMDRAO, 2015 or the MMDR bill, 2011 do not delve into the issue of downscaling extraction, as noted earlier the Supreme Court has already explored this ‘instrument’ in the case of Goa Foundation v. Union of India and ors. As such, downscaling of extraction would warrant availability of information just not on known reserves, but also biological carrying capacity, transport infrastructure, needs of local economies, and inclusion of local communities. Certainly, the imposition of resource caps either at the aggregate level or on total number of mines operating at a time at the national, state and district levels based upon sufficiency needs, will significantly contribute in making the implementation of existing regulations more manageable.

8.4.3 Capture of windfall profits and redistribution of value of minerals:

The issue of ‘super-normal’ profits acquired by mining companies, specifically in the case of iron ore extraction has been explored in detail in Chapters 5 and 6. This has also been a key concern which has received much attention in India. In order to enhance the share of profits captured by the State, and to enable redistribution of wealth of extracted, the MMDROA, 2015 hiked royalty rated and mandated the setup of DMFs, as noted earlier. However, there are several problems that persist. In this regard we would like to make three recommendations:
a) The MMDRAO, 2015 mandates the payment of ‘not more than one-third’ or 33% of annual royalties by the holders of mining leases of major minerals into the DMF.114 We would propose an increase in the share of royalties to be paid by holders of mining leases of major minerals to an annual sum equal to 100% of royalties.

b) One of the central problems related to the DMFs is on the utilisation and management of funds received. MMDRAO, 2015 offers no clarity on this matter; neither was the 2011 Bill.115 The provisions stop just by stipulating that it is the states who gets to decide on how fund will be used, and no further. In effect, many DMFs are likely to be mismanaged out of sheer ignorance of officials and lack of guidelines. As such it is recommended that specific guidelines for the composition of DMF, as well as introduction of guidelines for utilization of funds in order to efficiently benefit the targeted demographic be introduced into the MMDR, 2015.

c) Introduction of smooth procedures for enabling cooperative mining practices under the ownership of local adivasi communities, would potentially be an important step towards redistribution of value of mineral extraction by local people. As per the Samatha judgment, adivasi communities have the right to cooperatively mine resources within their region. This recommendation has also been included in the Standing Committee report on the MMDR bill, 2011 (see section 8.4.4 above).

114 The MMDR bill, 2011 had recommendations for the holders of mining leases of major minerals to pay an annual sum equal to 100% of royalties. The 2011 Bill states that, in case of major minerals (except coal and lignite) an amount equivalent to the royalty paid during the financial year (Section 43.2 (a)).

115 In contrast, the 2011 Bill, among others, contained detailed rules regarding the composition of the committee for the management of the fund (Section 57.1 (a)-(g)), clearly outlines the responsibilities of the committee (Section 57.2 (a)-(c)), and defined the order of priority on which funds from the DMF were to be spent (Section 56.6 (i)-(iii)). For instance, the first order of priority specified by the MMDRAA, 2011 was “payment of monetary benefits payable monthly or quarterly to members of the family of the person holding occupation or usufruct or traditional rights in areas affected by mining related operations” (Section 56.6 (i)).
members of the local adivasi cooperative society. This is linked to post-extractive proposal 5.7 discussed in the previous chapter.

8.4.4 Transparency and accountability: Transparency with regard to minerals extracted is imperative to holding companies as well as regulators accountable to the public. The MMDRAO, 2015, however, does not lay down sufficient terms and conditions to address this.\textsuperscript{116} In this regard we would like to recommend—based upon observations made in Chapters 4 and 5—expansion and maintenance of online real-time tracking of extraction, transport, and export for dissemination of information regarding ore transport and sale in public domain.

8.5 Conclusion
There are many issues surrounding mining in India, which among others, include existence of poor regulations, flexible decision-making powers, weak institutions, inadequate provisions for effective monitoring, and feeble enforcement of existing laws. Not all of these could be addressed in this thesis, and left for future research. Institutional reforms is an important step to ensure that environmental and social justice issues are taken into account. As argued above the legislative framework of India extends spaces for the local population and/or affected communities to raise concerns over violations by the extractive agents.

\textsuperscript{116} Although, there have been more stringent rules for offenders, the monetary payment creates disincentives for companies to break out of corrupt practices and illegal operations since it allows for companies to pay their way out. Further, the MMDRAO, 2015 misses out on some of the commonly recognized key issues with governance of mining operations. For instance, the 2011 Bill has provisions for providing funding through the National Mineral Fund, for “detecting and preventing illegal mining including commissioning of surveys and studies, and developing awareness amongst local communities and the mining sector” (MMDRAO, 2011, 50. 3. (e)). Further, it also offers rewards for whistleblowers through the State Mineral Fund, providing “expenditures incidental to enforcement of the provisions of section 114 of this Act and to reward whistleblowers on illegal mining” (MMDRAO, 2011, 53. 4 (g)).