



# Case Analysis: Samatha versus State of Andhra Pradesh, 1997

Special class



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**Samatha v. State of  
Andhra Pradesh & Ors.  
(1997)**

# Introduction

- The land with plenty of natural resources is the home of the population of tribal people who are the needy and the neediest.
- In particular, the tribal areas are the victims of poverty in the land of plenty.
- Many provisions were laid down in the Constitution for the standard of life of the tribal population.



- **Article 342, for example, states that the authority of the President to “notify communities as Scheduled Tribes” unreserved to accept the ST groups have experienced the worst displacement.**
- **Article 320, Article 332 and Article 334 of the Constitution guarantee the STs separate types of quotas.**
- **Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA), grants the powers for natural resource management and self-government to tribal communities.**
- **However, the widespread non-application of these provisions led to severe inequalities which led to poverty and deprivation of the tribal communities of India.**

# Background

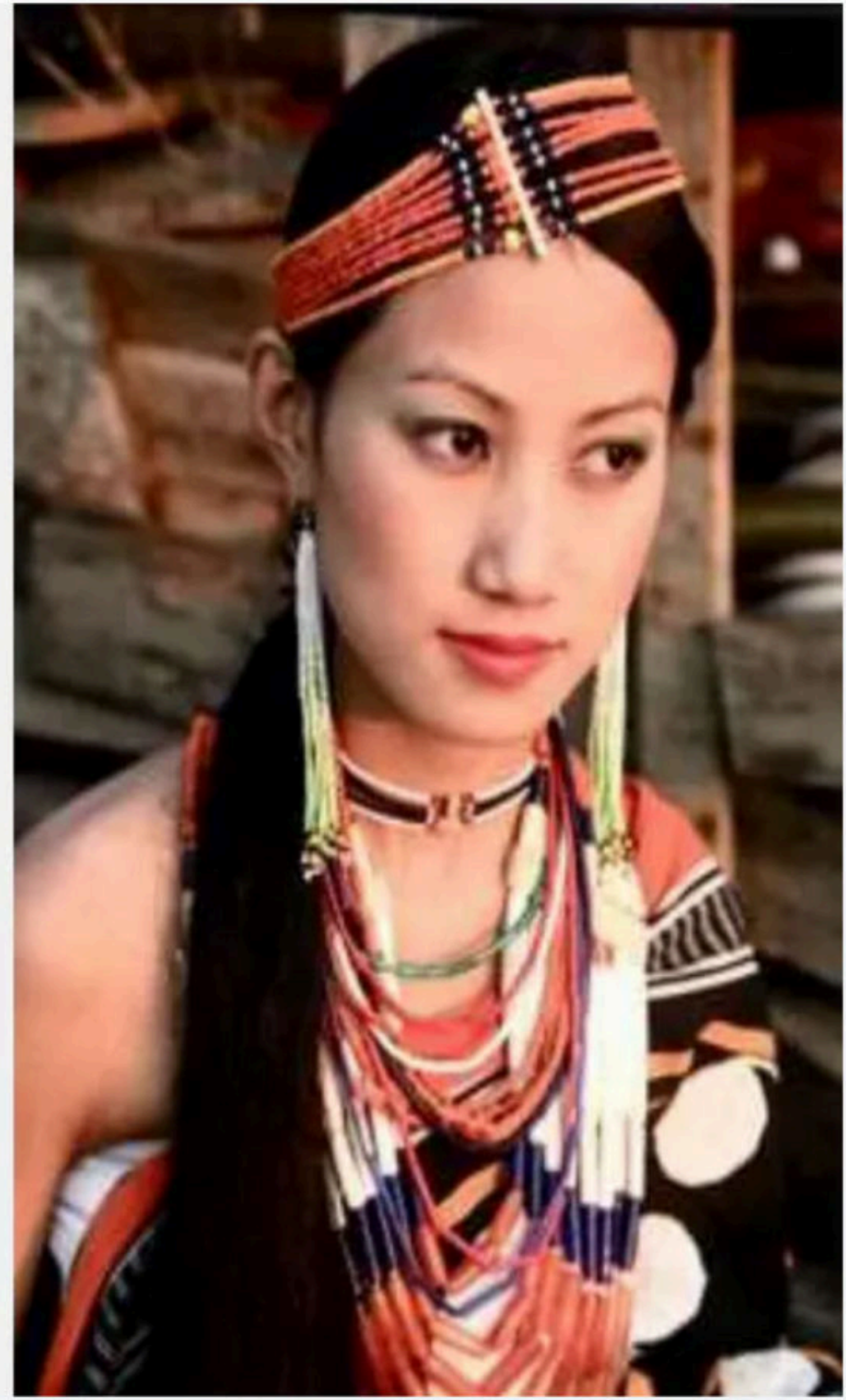
- **The Tribal people's greatest misfortune is that they occupy land that is highly rich in minerals, water and other resources that government and private companies need for the development of the country.**
- **Nearly 90% of coal and about 50% of other minerals are in their regions.**
- **This "growth" has little to do with improving or ensuring their lives.**
- **Instead, they are convinced they are uprooted from their familiar world and compelled to learn how to live with peculiar laws in an unfamiliar society.**
- **Over the decades, tribals have continuously lost their land holdings and are now alienated.**

- As per the 2001 census, the indigenous/tribal people who formed 8% of India's total population constituted over 50 % of the total displaced persons due to development projects.
- Until 1990, almost 85 Lakh tribals were displaced by major development projects, according to the Ministry of Tribal Affairs (MTA).
- The policies on liberalization, privatization and urbanization have become more troubling over the last two decades.
- The biggest threat to Tribal survival has emerged with "Growth."
- Ironically, the "new civilized culture" is now a perpetrator with its ecologically sustainable and peaceful lifestyle.



- **Tribals, their lands and other resources have been exposed to exploitative market forces mainly by funding mining projects, stainless steel and cement plants, wildlife sanctuaries, hydropower projects, factories and tourism projects, etc.**
- **The exploitation of tribal lands by influential bodies in all tribal areas across the country has become a widespread phenomenon.**
- **It is sad to know that those who have a better understanding of the constitution, distort the right “to live in their own conventional ways” provided by the Constitution.**
- **The serious threat to the Adivasis in the country today is the pressure on the provisions of the Fifth Schedule, which prohibits the transportation of tribal land to non-tribal countries.**

- Both central and several state governments are making serious efforts to amend the laws laid down in the Fifth Schedule and the laws of the states in question, so that private and company actors can take over tribal and forested lands.
- Privately-owned mining in almost all nine states, most particularly in Chhattisgarh, Jharkhand, MP, and Orissa, violates the Fifth Schedule.
- Hundreds of tribals from Kondadora, Bagata, Parjah, Khond, Kutia, Valmiki, and other groups have resided in the agency tracts in the district in Visakhapatnam in Andhra Pradesh.
- The agencies also have rich mineral resources, including calcite, bauxite, calcite and mica.



- **The Andhra Pradesh administration granted mining rents to small businesses and individuals on the basis of developments since the 1960s.**
- **When liberalization started in the 1990s, the government leased massive mining pipelines to big giants like Birla Periclase.**
- **This contravened the Land Transfer Regulation Act, 2018 banning the sale of land in developed areas to non-tribals.**
- **In an inner tribal village named Nimalapadu, Birla Periclase was granted 120 acres of calcite to mine.**
- **The world-renowned Borra Caves were also threatened with destruction, as the government was planning to give bauxite mining rents over the grottoes, known for its century-old stalagmites.**

- **Because of these fancy government decisions that neglected the people's rights and wealth, Samatha fought for the rights of communities of Adivasis, who would be displaced and affected by private mining firms.**
- **A PIL was filed in the Andhra Pradesh High Court in 1993, since the government was itself an "individual" and, therefore, had no authority to offer leases for non-tribals in a scheduled area.**
- **After four years of continuous resistance, the Supreme Court released a judgment in association with this case, in July 1997.**



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# The Samatha Judgement

- **The key theme of the judgment by Samatha is the notion of sustainable development and the concept of protection.**
- **In the ruling, the Supreme Court held that tribals can extract minerals either individually or through cooperating companies with state help financially in scheduled areas without affecting their ecosystem or forest land.**
- **In addition, the court held that, in the absence of the prohibition on the transfer of lands, any licensee or lease must provide certain duties and obligations to the tribal people who are affected by the project.**
- **Nevertheless, the court acknowledged the exception from these prohibitions for moving tribal property to state-owned entities or corporations.**

- **The court also ordered that, in addition to all ecology reforestation and maintenance expenses, at least 20% of the proceeds from each project should be set aside as a permanent fund for the needs of the tribals in question.**
- **This also instructed the Prime Minister, according to the judgment on tribal land throughout the country, to establish a national scheme.**
- **Through that decision, the Supreme Court opened a new area for judicial action, ensuring that forestry societies have the freedoms and security that our Constitution guarantees, for example, fair treatment before the law that contributes to social justice.**

- **The Honourable judges acknowledging the condition of the tribals in India, as a whole, rightly highlighted the 'right to development' as specified in the UN Convention on the Rights to Development.**
- **This decision put particular emphasis on Dr. Babasaheb Bhimrao Ambedkar's concept of 'liberal democracy' that acknowledges independence, equality and fraternity as values of life.**
- **The decision accepts that tribals have equal rights to social and economic and acknowledges the highest constitutional guarantee for 'Right to Life' as provided for in Article 21 of the Indian Constitution.**
- **The land in the scheduled areas shall be conserved for the social and economic empowerment of tribal people.**



# Salient features of the judgement

- 1. Under the 73rd Amendment Act, 1992, “each Gram Sabha shall have jurisdiction to safeguard in accordance with clause (m) (ii), the power to prevent land alienation in the Scheduled Areas and to take effective action to restore any unlawful alienation of a scheduled tribe’s property.”**
- 2. Minerals to be mined by tribals themselves or by cooperative societies with state’s financial assistance.**
- 3. The court defined certain duties and responsibilities to the lessee: at least 20 per cent of net profits as a permanent fund for development needs apart from reforestation and ecology conservation.**

- 4. Transfer of land in Scheduled Areas by way of lease to non-Tribals, aggregate companies, etc. is prohibited in any manner to avoid their exploitation.**
- 5. Transfer of mining leases to non-tribal, private, aggregate companies or alliance firms, etc., is illegal, invalid and inoperative. State instruments such as APMDC are exempted from the prohibition.**
- 6. A lease extension is a fresh lease grant and therefore any such extension is forbidden.**

**8. Conference of all the chief ministers, ministers holding the ministry concerned and the prime minister concerned, and the central ministers concerned will take a policy decision for a clear tribal lands scheme across the country.**

# Weapon of the weak

- **The Samatha decision has been the weak's tool, all across the Vth Schedule states.**
- **This was used for the making of policies in support of disadvantaged groups.**
- **When the historical judgment is celebrating 23 years, a certain decision by the National Green Tribunal, increased its credibility further.**
- **In its order of 20 July 2017, the NGT had revoked four environmental clearances given in December 2008 for Jarilla Blocks- 1,2,3 & 8 for bauxite mining in Visakhapatnam district's Chitapalli Mandal.**

- **The order also specified that if any party is interested in mining, it must re-approach the Ministry of Environment and Forests (MoEF) to obtain clearance for bauxite mining and also take the views of the parties, including Samatha, concerned.**
- **In the case of Niyamgiri Bauxite mining, the judgment has played a good precedent.**
- **This was in favour of the Dongria Kondhs inhabiting Niyamgiri 's sacred hills.**
- **As democratic decision-making platform on citizen, group and cultural rights for the tribals and the traditional foresters, the Supreme Court has provided strong support for the position of gram sabhas.**
- **In cases of illegal mining years after a year, as we look at the official statistics closely, we find almost no action taken.**

## MINING ON TRIBAL LAND

*Odisha government selected 12 villages, that lie not more than 3 km from the mining area, to give their vote*

### KALAHANDI

Ejrupa

Phuldumer

Palberi

Kunakadu

Tadijhola

Lanjigarh refinery

Niyamdongar  
Proposed mining area

Jarapa

Khambesi

### RAIGADA

Lakhpadar

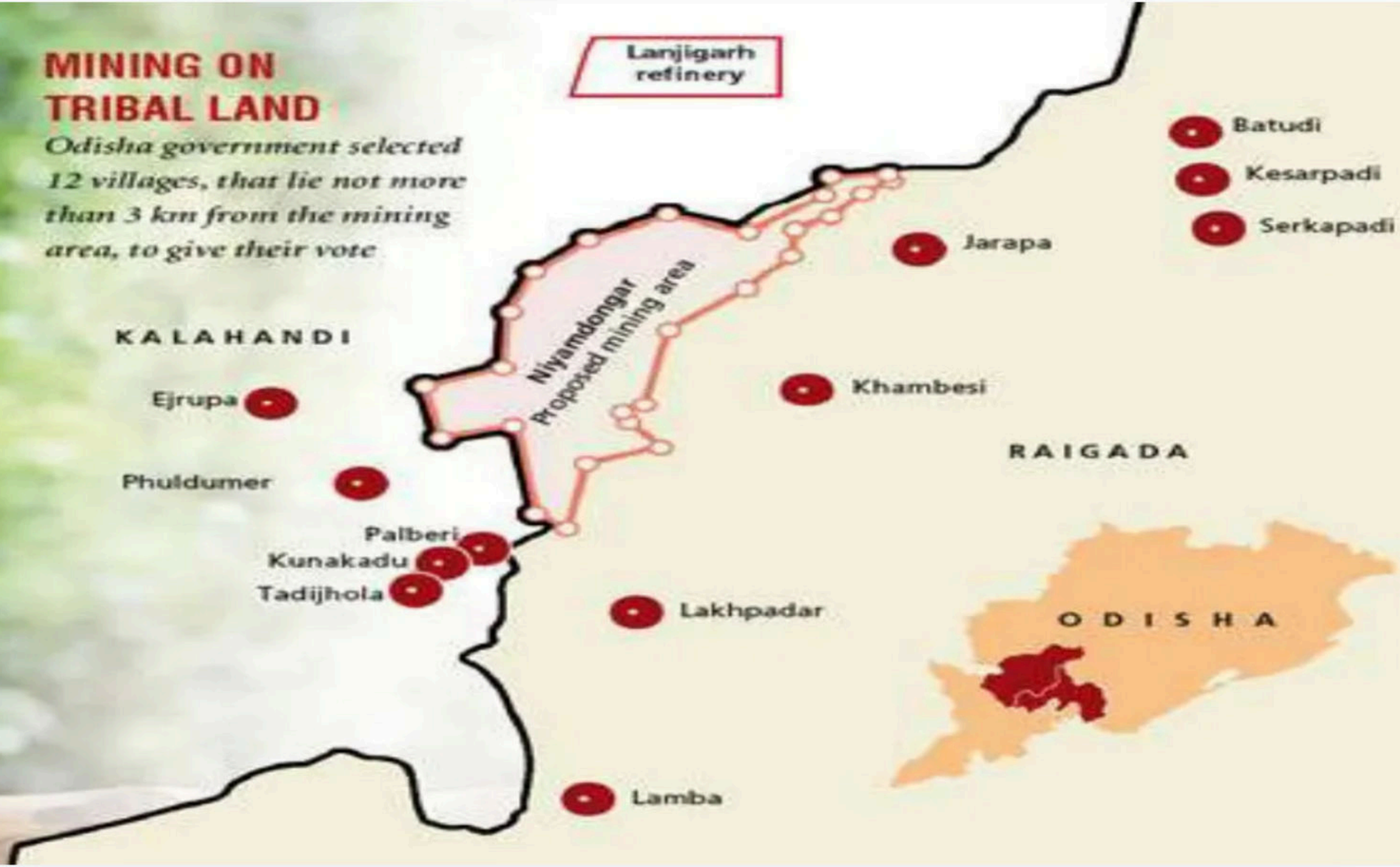
Lamba

Batudi

Kesarpadi

Serkapadi

ODISHA



- **As per sources, FIRS had been lodged in 5% of cases, and fewer than 15% of cases had been brought in courtrooms, of the nearly 400,000 cases of illicit mining between 2013 and 17 in 22 states.**
- **The flaws in some states are so egregious that the negligence of the authorities can not be overlooked.**
- **FIRs were lodged in only three cases, for example in the year 2013-17 of 36,727, and court cases were lodged in four cases.**
- **The Samatha decision is very important in this sense.**

# Strong opposition to the judgement

- **Needless to say, strong corporate houses and political class vested interests joined hands to negate the decision of the apex court.**
- **Unlike PESA, the Samatha judgment was also an obstacle in their plans for “growth.”**
- **In March 2000, in order to amend the Samatha order, the Supreme Court refused the petition of State and Central Governments.**
- **Yet attempts to nullify the Samatha judgment by amending the Fifth Schedule persisted in various quarters of government, despite the fact that the Supreme Court had not placed a blanket ban on mining activities in the scheduled areas.**

- **Needless to say, the strong corporate lobby will continue to pressure politicians to reduce their social commitments and care for their business interests.**
- **The market forces have become the key player in the new liberalization, privatization, and globalization system, not the society or government.**
- **Laws and legislation no longer aim at social justice and welfare but at increasing income and optimizing resource abuse.**
- **The new economic policy's primary objective is to redefine the state's position and reframe laws to comply with global interests.**
- **In countries such as India, legitime governments have become weak and corrupt, under the control of strong transnational corporate lobbies.**

- **They are attempting to play with the conventional constitutional provisions to shift ownership of natural resources from native Adivasis to the corporate lobby.**
- **The Indian government seems determined to adopt the narrow western idea of 'growth' by means of market forces and the commodification of natural resources, and ordinary peoples of the world must aspire for social justice, equality and the sustainable livelihoods of the most oppressed Indian tribal group.**
- **To order for wider issues of long-term sustainability or the conserving of natural resources to its pure state, corporate consumer culture is too short-sighted.**

# Conclusion

- **Samatha's decision is, therefore, a significant decision that has helped to save programmed areas and tribals in different states since 1997.**
- **The Supreme Court has proven itself to be a saviour, while different states and other government bodies have sought to abrogate and change the decision.**
- **The tribes in various planned countries used the decision for their benefit, although many faced no implementation.**
- **It can be resolved by raising the consciousness of the various security laws envisaged in the Constitution between the tribal communities through the Samatha rule.**

- **Samatha, an NGO that operates throughout the Schedule-V states is undertaking this mission.**



THANK YOU!