

# THE 2015 MINES AND MINERAL LAW IN INDIA- A STEP IN MAKING "MAKE IN INDIA GLOBALLY COMPETITIVE"

Written by *Shrabani Acharya*

*\* BBA LLB (Honours) Graduate, National Law University Odisha*

---

## INTRODUCTION

In the light of a few episodes of suspension in mining action – the cancellation by the Supreme Court in August of the assignment of more than 200 coal pieces is a current case of what appears to have turned into an intermittent wonder in view of regulatory/administrative logjams, lacks implementation of concerned laws and the similarly spurious indictment of deceitful gatherings—and the obstruction that this stances to the administration's plan of financial development, the Rajya Sabha passed a large number of revisions to the nodal enactment for these issues, the Mines and Mineral (Development and Regulation) Act of 1957. <sup>1</sup>As of now having got through the lower house, the Mines and Minerals (Development and Regulation) Amendment Bill of 2015 now anticipates only the President's approval to come into constrain. The goal of this activity is to kick-begin movement in the mining part by evacuating bottlenecks that are keeping mining industry from turning into a development multiplier in the nation; the illustrative note to the new Bill states to this end it intends to set up components to enhance straightforwardness in the distribution of mineral assets, get for the administration what's coming to its of the estimation of assets, draw in private speculation/investors and most recent innovation, and dispose of administration delays.

## BACKGROUND

The Mines and Minerals (Development and Regulation) Act, 1957, gives the legitimate framework to regulate the mines and the give of various allows/permits and licenses for

---

<sup>1</sup> Web source: <http://www.indiaenvironmentportal.org.in/category/373/thesaurus/mining-regulations/>

investigation and misuse of minerals (aside from oil and petroleum gas). The Parliament is engaged to regulate and guide mining exercises and the improvement of minerals to the degree that is practical in broad daylight intrigue; state assemblies may manage a similar subject to Parliamentary rebuke. <sup>2</sup>The National Mineral Policy (NMP) presented by the Union government in 1993 opened up the division to private and outside investments, setting off an expansion of profitability in the segment yet which coupled, shockingly, with a gigantic development of illicit mining exercises. To cure this circumstance, the Hoda Committee<sup>3</sup> was set up in 2006 to analyze the NMP, and on the premise of its suggestions the arrangement was re-examined in 2008; the new strategy looks to boost private division interest in investigation and mining, guarantee straightforwardness in giving concessions, and weights on maintainable mining practices to protect the earth and nearby populace. The concentration at that point moved to patching up mining foundation in the nation by realizing change in the essential enactment itself and a few draft alterations were presented in Parliament in this manner, however without much of any result, slipping by even with political resistance. The requirement for an amendment in the law came due to provisos that have apparently mushroomed throughout the years being utilized by degenerate partners to subvert legitimate technique to their finishes. India's framework for direction of the mining division is famously powerless, for instance, the candidate organization for rent is itself depended with picking and paying the specialist who has the Environmental Effect Assessment (which gives information on the conceivable negative social and ecological effect of a proposed operation). <sup>4</sup>This same appraisal at that point controls the administration's choices/decisions to permit an operation, supporting a glaring irreconcilable circumstance. In the present situation, business endeavors in mining are, in no short measure due to the Mines and Minerals Act, convoluted to the degree that makes them hard to keep check over. Among others, there are four wide worries that should be arranged<sup>5</sup>:

---

<sup>2</sup> Swapan Ku. Halder, *Mineral Exploration: Principles and Applications*.

<sup>3</sup> *Ibid* 3.

<sup>4</sup> Web source: <http://www.prsindia.org/billtrack/the-mines-and-minerals-development-and-regulation-amendment-bill-2015-3648/>

<sup>5</sup> Unscrupulous mining lobby, Illegal mining continues to flourish in Karnataka, backed by political patronage. (Editorial), 17/07/2010, *Economic and Political Weekly*

- **Procuring licenses:** The law sets out the structure for any prospecting, renting or mining movement to be completed for indicated minerals, and the licenses that should be gotten. The Act enables the focal government to outline the standards and conditions relevant both for giving of licenses and for the genuine action completed by undertakings. The authorizing expert for mining exercises is the state government.
- **Environmental clearances:** These are administered by various laws. Notwithstanding the natural administration arrange for that must go with each mining lease application, a mining organization will likewise need to get ecological freedom for the venture from the Ministry of Environment and Forest under the Environment (Protection) Act 1986. Furthermore, for exercises in woodland territories, leeway is additionally required under the Forest (Conservation) Act, 1980. Acts relating to untamed life assurance, biodiversity and the nature of air and water may likewise be relevant.
- **In expansion to the natural administration arrange for that must go with each mining lease application, a mining organization will likewise need to acquire ecological freedom for the task from the Ministry of Environment and Forest under the Environment (Protection) Act 1986.**
- **Land Acquisition:** The confounded strategies associated with the obtaining of land have for long been a reason for embitterment for speculators in the mining part. The present government as of late brought another arrangement of standards to revise this circumstance, and keeping in mind that it is too soon to state if these measures have had the coveted impact, it is a positive development.
- **Rights of influenced people:** When substantial undertakings are arranged and arrive is gained for those, individuals are frequently uprooted from the venture ranges and should be restored suitably.

## IMPORTANT FEATURES OF THE BILL<sup>6</sup>

1. Minerals have been named being either notified or non-notified: In regard of informed/notified minerals, mining lease is proposed to be allowed by state government through closeout/auction, though in regard of non-notified minerals, a joined prospecting permit/license-cum-mining lease will be offered again following a bartering procedure.<sup>7</sup> The basis for this is fruitful bidders will direct investigation and prospecting work at their own hazard and cost, and if there should be an occurrence of a discover, they should comply with the offer conditions which could be as a generation/production share, or a payment connected to the royalty payable, and so forth. State Governments have been engaged to advise the range available to be purchased by focused offering, including e-sell off, for prospecting permit/license cum mining lease for any mineral other than a notified mineral to candidates who fulfill qualification conditions NOTE:

(i) In expansion to the way that the National Mineral Policy (NMP) 2008 does not remember it, a noteworthy downside of the bartering technique is that if there should be an occurrence of particularly rich locales/places that the administration has not beforehand prospected, it and the nation may miss out on conceivably a rich source of income. The bartering course may likewise prompt specific mining while at the same time leaving second rate minerals in the ground, wastage of assets and blow up the cost of definite item making it un-competitive versus imports

(ii)<sup>8</sup>The Hoda Committee report states as follows - "Steel making limits as of now in presence on first July 2006 that don't have hostage mines may likewise be given special allotment of sufficient iron mineral holds inside the state without the need to experience the procedure of delicate/closeout, as a one-time measure to give a level playing field... . Due respect ought to be given to the measure of the steel influencing limit while considering distribution of a particular mineral to body." in such manner, existing offices ought to be given need for

---

<sup>6</sup> Web source: <http://www.prsindia.org/billtrack/the-mines-and-minerals-development-and-regulation-amendment-bill-2015-3648/>

<sup>7</sup> Mining Policy and Legislation, Annual Report- 2010-2011, web source: <http://mines.nic.in/writereaddata/UploadFile/chap4.pdf>

<sup>8</sup> Web source:

[http://www.indiaenvironmentportal.org.in/search/?q=&selected\\_facets=im\\_content\\_tags%3A373&reset=0&selected\\_facets=bundle%3Anode\\_feature\\_article](http://www.indiaenvironmentportal.org.in/search/?q=&selected_facets=im_content_tags%3A373&reset=0&selected_facets=bundle%3Anode_feature_article)

assignment of mines and metal, rather than designation through sale that may cause firms simply beginning in the business to outbid meriting and able applicants.

2. Lease Period: Under the old enactment, a digging/mining lease was allowed for a period of 30 years and at least 20 years. It could likewise be recharged for a period up to 20 years. Under the new Bill, the rent time frame for coal and lignite stays unaltered; for all minerals other than coal, lignite and nuclear minerals, mining leases should be conceded for a time of 50 years. On expiry of the rent, rather than being recharged, the leases might be set available to be purchased.

3. A noteworthy empowering arrangement of the Bill is authorization for transfer of the mining lease with earlier endorsement of the state government. Notice of ninety days is to be given, in such way as might be recommended by the Central Government, to any individual qualified to hold such mining lease or a prospecting permit cum-mining lease. Endorsement might not be had until the point that the transferee has acknowledged each and every conditions and liabilities under any law, and the State Government may charge such expenses as it sees fit.

4. For the prosperity and enthusiasm of the general population and zones influenced by the mining related operations, the Government has proposed the setting up of District Mineral Foundations as non-benefit bodies. The DMFs will be subsidized by the holder of a mining lease or a prospecting permit cum-mining lease by such level of eminence as endorsed by Central Government for minerals other than minor minerals and by such sum as might be recommended by State Government for minor minerals (to be paid by mining lease holders every year).

NOTE: Mining eminences/royalties in India are now high contrasted with some other nation on the planet. The new Companies Act forces a 2% CSR commitment on all substances that it administers. The cost of most significant metals is represented by LME and their aggressiveness is as of now under strain in local and in world market. Any extra exact for DMF will influence the aggressiveness of taking an interest financial specialists opposite imported items. The Bill additionally accommodates the production of a National Mineral Exploration Trust. The NMET might be built up by the focal government for territorial and nitty gritty mine investigation. Licensees and rent holders might pay the NMET a sum not more than two percent of eminence recommended by the focal government.



5. To engage states in handling the issue of illicit mining, the new Bill has an arrangement to empower State Governments to set up unique courts for trial of offenses under the Act, on the off chance that they esteem this essential.<sup>9</sup>

6. Penalties for infringement of standards, illicit mining, trespassing and so on., have been made harsher; from the current "detainment for a term which may reach out to two years, or with fine which may stretch out to twenty-five thousand rupees, or with both", discipline should now be detainment for a term which may stretch out to five years or with fine which may stretch out to five lakh rupees or with both. The new law looks to acquire some genuinely necessary straightforwardness and tries to advance social partners enthusiasm for the treatment of mines and mineral rights by state governments and private players.

## **PERSPECTIVES IN THE INTERNATIONAL MINING SECTOR**

Different elements have added and contributed to the development of the mining sector in developing markets, for example, commodity request/demand and cost/price boom, progression of mineral approaches, innovative headway, mining changes and expanded privatization. This has prompt a huge move in speculation/investment designs, as winds up plainly apparent from the accompanying certainties:

- <sup>10</sup>In 2012, Latin America was the most mainstream worldwide investigation spending destination, representing a 25% offer, for the most part focused toward gold investigation.
- Africa's offer of worldwide investigation spending rose to 17%, making it the second-most favored destination for investigation in 2012.

---

<sup>9</sup> *Ibid*

<sup>10</sup> Manoj Kumar, THE 2015 MINES & MINERAL LAW IN INDIA—A STEP TOWARDS MAKING 'MAKE IN INDIA' GLOBALLY COMPETITIVE, web source: <http://www.davidpublisher.com/Public/uploads/Contribute/55838ba58e2b0.pdf>

•<sup>11</sup> Among other developing business sector economies, China and Russia, alongside Mongolia, Kazakhstan, Finland and Turkey, represented the fourth biggest spending share in 2012—13. Mining presents the two open doors and difficulties for weaker states all around. Worldwide interest for minerals is attached naturally to populace development and neediness destruction, giving an upper hand to mineral-rich countries and states. India must take awareness of this, given its huge mineral assets which are yet to be tapped because of absence of productive framework. It might in this undertaking look for the case of nations that it has mining exchange related understandings with, and that have effectively made a positive domain for investigation through alluring arrangements and extra motivating forces.

### **WHAT DOES INDIA HAVE TO OFFER?<sup>12</sup>**

As expressed above, India has a rich abundance of mineral assets, creating 89 minerals—4 fuel-related minerals, 10 metallic minerals, 50 non-metallic minerals and 24 minor minerals. Be that as it may, there still exists extensive degree for expanding the asset position by promote investigation of known stores and revelations of new stores, embracing best in class innovation and present day techniques like elevated observation or geophysical reviews. The Geological Survey of India is the vital office for land mapping and local mineral assets evaluation of the nation. Itemized investigation ashore is right now done by the Mineral Exploration Corporation, Directorates of Mining and Geology of the State Governments and different Central and State Public Sector Organizations, with the NMET [as depicted above] anticipated that would join their positions when the Bill comes through Presidential Assent. <sup>13</sup>It is clear however, that in the event that it is to keep pace with the developing interest, India must improve local mineral generation and investigation action. <sup>14</sup>And keeping in mind that these administration offices will keep on performing the errands appointed to them for investigation and overview, the onus might now be upon the private segment to be the fundamental wellspring of interest in surveillance and investigation later on; government offices will

---

<sup>11</sup> Web source: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/presentation/wcms\\_150296.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/presentation/wcms_150296.pdf)

<sup>12</sup> Available at <http://www.thehindu.com/business/Industry/Government-to-amend-mining-law/article13994167>.

<sup>13</sup> Web source: <http://www.prsindia.org/billtrack/the-mines-and-minerals-development-and-regulation-amendment-bill-2016-4228/>

<sup>14</sup> *Ibid* 12.

exhaust open finances principally in ranges where private division ventures are not pending. Monitoring the immense capability of the segment, the Indian government has been reliably, and in a sober minded way, opening up the beforehand controlled administration to usher private interest in the segment and imbue assets, innovation and administrative aptitude in that. The legislature has effectively made moves to flag goal in restoring private speculation: trying to check a developing dependence on imports, Prime Minister Narendra Modi passed an order in December to enable private firms to dig and offer coal without precedent for over 42 years, what with India on track to overwhelm the United States as the second largest coal customer after China this decade [India is right now the world's third-greatest shipper, dispatching in coal from nations, for example, Australia and Indonesia]. Both nearby and abroad speculators ran to a 10 percent stake offer of state-run Coal India that raised about \$3.6 billion<sup>15</sup>. In any case, this intrigue may likewise show how government firms will keep on having an edge in exploring India's labyrinth of clearances. To lure enthusiasm from abroad, remote direct speculation/investment arrangement/agreement in the mining part has been step by step changed in the course of the most recent couple of years. Beginning in 1997, programmed endorsement course for speculations including remote value interest up to half in mining ventures and up to 74% in administrations coincidental to mining was presented.<sup>16</sup>The FDI top for investigation and mining of jewels and valuable stones has been expanded to 100% under the programmed course with impact from 2006. With this, remote direct interest in the digging area for all non-nuclear and non-fuel minerals are presently at a 100% through the programmed course including jewels and valuable stones. In a word, mining concessions in India are just accessible to Indian nationals or organizations enlisted in India, yet there is no top on the degree of outside possession in those organizations. Earlier endorsement isn't required; in any case, the remote speculation must be accounted for to the Reserve Bank of India inside 302 days of the venture. There are particular enlistment prerequisites for bringing in or sending out gear and for the long haul work of remote nationals (more than 180 days). Also, different dynamic changes are now in progress, for example,

1. Geological Survey of India/Indian Bureau of Mines reform –

---

<sup>15</sup> Mining In India, CSE Media Briefing, [http://www.cseindia.org/userfiles/Mining\\_India.pdf](http://www.cseindia.org/userfiles/Mining_India.pdf)

<sup>16</sup> Web source: <http://www.livemint.com/Politics/91mxnixvIzcHovm9I3OO8I/India-said-to-consider-law-for-auctioning-mineral-mining-per.html>



- [i] Revamping the vision and redefining the roles and responsibilities.
  - [ii] Re-organization of functional divisions and structure with special focus on modernization of equipment, hardware and software.
  - [iii] Greater coordination with state government agencies through a 'Regional Co-ordination Committee'.
  - [iv] GSI being allowed to function commercially where required through MoU with MECL.
  - [v] Disseminate information through internet and other information– sharing mechanisms.
2. International tie-ups MoUs with countries like Australia, Canada, etc. for bilateral research cooperation, knowledge sharing and promotion of trade and investments.
3. Sustainable development framework –
- [i] Develop a Regional Mineral Development Plan to address the health, safety and social aspects.
  - [ii] Formulation of mine level framework and systems that are periodically reviewed
  - [iii] Guidelines for community engagement, benefit sharing and socioeconomic development.
  - [iv] Stringent auditing of mine closure plan addressing post–closure issues such as water treatment or catastrophic events.

### **WHAT CAN WE LOOK FORWARD TO?<sup>17</sup>**

- Despite the slowdown, India is still the second-fastest growing economy, after China. Demand for minerals, as well as for mining services, is robust in the country.
- Mining in India is becoming more structured, and companies have started outsourcing part of the project to mining service companies.

---

<sup>17</sup> William Graebner, *Coal-Mining Safety in the Progressive Period: The Political Economy of Reform*

- The largest mining company in India, i.e., Coal India Limited [CIL], plans to invest around INR254 billion during the Twelfth Five Year Plan [2012–17]<sup>18</sup>.
- Contract mining could prove to be a solution to the on-going current coal deficit in country.
- As the industry focuses on adapting international levels of technology, there exists untapped potential in the Indian mining equipment sector.
- The Bill clearly take the Indian Regulation on Mining a step closer towards making the Narendra Modi Government's "Make In India" initiative more competitive globally to attract core sector investments into India.
- The Bill provides for the creation of a District Mineral Foundation (DMF) and a National Mineral Exploration Trust (NMET). The DMF is to be established by the state government to work towards improving the lives of people from the areas affected by mining operations. The NMET shall be established by the central government for regional and detailed mine exploration. The amount payable to both these organizations by the mining lease owners as tax would be utilized for such developmental work<sup>19</sup>.
- However, there is a twist to this tax to be paid as royalty to DMF. Though the amount to be paid to DMF has been fixed at 33% of the royalty payable, the existing miners of minerals including coal will have to pay to the District Mineral Foundation (DMF) a 100% of the royalty over and above the royalty paid by them to the state governments. While a rate of 100% has been specified for mines allotted prior to the amendments to the MMDR Act, state governments are expected to recover the full amount. Since all current operating mines of Tata Steel, SAIL, Hindalco and Sesa Sterlite were granted before the MMDR Act was amended; the 100% ceiling will apply to all of them. Once the leases expire and the mines are re-auctioned, the amount will be 33% of the royalty payable. Mining lease holders would be paying to NMET an amount equivalent to two percent of the royalty prescribed by the central government.
- The Act also makes it mandatory for State Governments to conform to the constitutional provisions related to Scheduled Tribes and Other Traditional Forest Dwellers and panchayat

---

<sup>18</sup> Digest of Indian Minor Minerals, <http://ibm.gov.in/index.php?c=pages&m=index&id=610>

<sup>19</sup> Web source: <https://scroll.in/article/743164/odishas-mining-boom-is-over-and-everyone-is-scrambling-to-cut-their-losses- Niyamgiri case>.

acts while framing operating rules of DMF. This would allow the Government to have a dedicated fund for undertaking exploration. Besides, transferability provision in mining leases granted through auction would promote greater flow of investment in the mining sector and increase efficiency. The act also has strict provisions against illegal mining as offenders of mining related issues would be subjected to a maximum punishment of 5 years imprisonment or fine of Rs. 5.00 lakhs per hectare. State Governments are also empowered to set up Special Courts for speedy trial of offences. Considering the issue of local oppositions for mining which is affecting the operations of the metal and mining sector for so long, these provisions are expected to tame the grievance and put the money into the creation, management and maintenance of local infrastructure in mining affected areas.

- The levy of tax to the state governments in the form of District Mineral Foundation (DMF) is seen by the integrated mining companies as an additional burden. According to spokespersons from the industry the royalty for the minerals like iron ore, chromite, zinc, lead and silver are already high at 15%. They feel that extra levies will impact the cost component of their products to a considerable extent. The rate of royalty on coal shall still be @ 14% (Fourteen percent) ad-valorem on price of coal, as reflected in the invoice, excluding taxes, levies and other charges. The royalty rates for coal and lignite have not been raised in 2014, taking note of state electricity boards' apprehensions that this could raise the cost of power generation<sup>20</sup>.
- The rate of royalty on bauxite is unchanged at point six zero per cent of London Metal Exchange Aluminium metal price chargeable on the contained aluminium metal (revised in 2014). States like Odisha have been asking for a hike in the royalty rates for the minerals in order to establish smooth mining operations in the state. Though the royalty rate has not been hiked for bauxite, the tax to be paid to DMF (100% for existing miners and 33% for new lease) is expected to bring revenues to the state where a large number of forest dwellers are dissatisfied with the mining operations happening in their locality.
- To sum up, the silver lining is that though the levy in terms of royalty and DMF contribution is very high, it should reduce local opposition on the ground that the money is supposed to be used for mining area development in the key states of Jharkhand, Odisha, Chhattisgarh and MP

---

<sup>20</sup> *Ibid* 19.

which have a large reserve base across minerals. JP Morgan also says in a report that “Post the coal block auctions, where there is significant money flow to the states, the increase in tax would also bring the cash inflow from other minerals closer to coal,” Considering it is a much needed step towards regularizing the mining sector and local infrastructure development, we hope to see a change in the mineral and mining scene in near future.

## CONCLUSION

As India pitches to hard-offer 'Make In India' to pivot the fortunes of mining in the nation by getting this new law, it must spring 2015 THE 2015 MINES and MINERAL LAW IN INDIA 497 energetically without flurry.<sup>21</sup>In any case, a wide-scale extension asset and hold base for minerals distinguished as having sufficient potential must be embraced by venturing up investigation and helping global procurement of vital minerals. The current geographical study endeavors of the legislature ought to be supplemented with lessening in allow postponements to make a more good strategy condition; this is imperative to relieve partner vulnerability in time and results while granting licenses. Similarly essential is the foundation of an arrangement of center empowering influences crosswise over framework, human capital and innovation.<sup>22</sup>The Indian government must guarantee best practice innovation application over the mining esteem chain, ventures to connect the looming lack of human capital in mining, particularly to mine designers, certificate holders and talented/semi-gifted work. At long last, it is basic that the correct administration structure be set up for powerful usage of strategy activities. Notwithstanding, and keeping in mind the end goal to enlarge existing framework, the advancement of geo-logical organizations with the state government, industry and different partners for the administration of mineral assets and improvement of mineral based businesses, could boundlessly undermine delays and advance comprehension between them, prompting expanded productivity. India has just flagged expectation in its forceful quest for infrastructural

---

<sup>21</sup>Websource:

<https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiDwPOo58nWAhUFvY8KHQ9VBosQFggyMAI&url=http%3A%2F%2Fwww.davidpublisher.com%2FPublic%2Fuploads%2FContribute%2F55838ba58e2b0.pdf&usg=AFQjCNHyit-Mnbzx4wfZwwPEo3dPeoywJA>

change—ingenuity in this approach will go far in making the nation's mining part as focused as those it tries to coordinate.

