



MINES AND MINERALS BILL, 2015: DISEMPOWERING THE COMMUNITY?

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For over five years now, the central government has been in the process of framing and enacting a new legislation to develop and regulate India's mines and minerals. However, in a short span of less than two months, the NDA government promulgated an Ordinance, introduced and passed a new version of a Bill in both the houses of Parliament. The Bill provides a legal framework to regulate the mining sector. A host of unaddressed concerns in the Bill question the government's intent of protecting the interests of the indigenous populations.

Summary

Minerals are valuable natural resources being finite and non-renewable. They constitute the vital raw materials for many basic industries and are a major resource for development. The Mines and Minerals (Development and Regulation) Amendment Bill, 2015 that replaces the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015¹ brings to a close the long and protracted process of consensus-building on the legal framework. The Bill will serve as the basis for responsible extraction of the country's natural resources.

A number of clauses in the Bill still fall short of expectations on some crucial aspects:

- While the 1957 Act permitted up to 10 sq km as limit for mining acquired by one lease which could then be increased to cover additional area through one or more licenses or leases, the 2015 Bill amends this provision and allows the central government to increase the area limits for mining.
- The 1957 Act provided for a mining lease for a maximum of 30 years and a minimum of 20 years that could be renewed for 20 years. Under the Bill, the lease period for coal and lignite remains unchanged. For all minerals other than coal, lignite and atomic minerals, mining leases shall be granted for a period of 50 years. All mining leases granted for such minerals before the Bill, shall be valid for 50 years².
- Important aspects related to 'affected persons' and 'reasonable compensation' are loosely defined.
- There is no mention of "informed consent" of the affected community in the Bill except when it is a Fifth

Schedule area. A Fifth Schedule area is defined in the Indian Constitution and connotes an area with majority tribal population, under-developed nature of the area, and marked disparity in economic standards of people.

Oxfam India³ along with the network of civil society organisations "mines, minerals & PEOPLE" (mm&P), urges policymakers and Parliamentarians to prioritise the long-term stability of mining regions and the wellbeing of people over short-term profits, by amending the Bill as follows:

Recommendations

- Free, Prior and Informed Consent of mining affected communities before commencing mining operations
- Grant 26 per cent share of equity to affected communities so that they become stakeholders in the mining life cycle
- Restrict the size and duration of mining concessions to protect indiscriminate use of community land
- Define 'Affected Persons' and 'reasonable compensation' more precisely
- Strengthen Institutional Framework for ensuring sustainable mining practices

The Mining Sector

Eighty-nine mineral types worth more than Rs. 2.27 lakh crore were extracted during the year 2013-14⁴. Half of India's districts host mining activities⁵. The political will to unlock "the potential of the mineral sector"⁶ has been reinforced with the new government's campaign to Make in India⁷ and their hurriedly pushing the mining ordinance by undermining consultations with affected people⁸.

The National Mineral Policy 1993 and 2008 opened mining for private sector and foreign investments. However, regulatory mechanism in the sector remains extremely poor⁹. There is rampant illegal mining and it has come to be associated with scams, conflicts, violations and ecological degradation¹⁰.

In 2010, states across India reported 82,000 cases of illegal mining. In contrast, only 3461 mines, also known as reporting mines, recorded production¹¹. As of 31st March 2013, the total leases stood at 11,104 with a lease area of 4982 sq km. With a new ordinance differentiating between notified and non-notified minerals, the total lease area under notified minerals (the Fourth Schedule of MMDR Ordinance) is massive (i.e. 60.5 per cent) and notified minerals hold almost 31 per cent of the total leases. While the ordinance and the Bill detail the process of notifying areas of Mining Lease or Prospecting License cum Mining Lease, it lacks provisions such as Social Impact Assessment (SIA) for better scrutiny.

The states richest in mineral resources are also amongst India's poorest. Chhattisgarh's mineral contribution to GDP is 12 per cent but it reports the second highest incidence of poverty amongst all Indian states (47 per cent), after Bihar¹². There is also an overlap since the most biodiversity rich forestlands in India account for patches of its mineral rich land. An estimated 1.6 lakh of forestland has already been diverted.¹³ 90 per cent of India's coal and 80 per cent of other minerals are found in areas inhabited by tribals. The Samata Judgment had reaffirmed the protection granted by the Constitution to inhabitants of Fifth Schedule area, but governments have actively sought to dilute these safeguards¹⁴. The passage of the Forest Rights Act 2006 engendered a hope that it will redress the historic exclusion of communities. Similarly, since the passage of Panchayat Extension to Scheduled Area (PESA) Act 1996, communities in Scheduled Areas got greater say in the governance of natural resources. However, most of these progressive laws are under threat of getting diluted.

Timeline of the MMDR (Amendment) Bill

The UPA government in 2009 initiated the process of revising the 1957 Act. By June 2010, six drafts of the Bill were available. The Ministry then put a final draft of the MMDR (Amendment) Bill on its website on June 3, 2010. On June 16, 2010, a Group of Ministers (GoM) was set up and a revised draft in July 2011 followed which watered down some of the progressive clauses¹⁵.

The MMDR Bill was introduced in Lok Sabha on December 12, 2011 and was referred to the Standing Committee on Coal and Steel on January 5, 2012. The Committee submitted its report to Parliament on May 7, 2013 but since the government could not table the Bill before dissolution of Lok Sabha, it lapsed. Following General Elections in 2014, the NDA government drafted another Bill that was uploaded as draft on the Ministry website on November 16, 2014.

However, the Bill was not tabled in the winter session of Parliament and on January 8, 2015, the Cabinet suggested the ordinance route for the proposed amendments to MMDR Act, 1957 and sent the Ordinance text to the President's office. With the Ordinance getting the Presidential approval, it was promulgated on January 12, 2015. The MMDR (amendment) Bill based on the Ordinance was introduced in Lok Sabha on February 24, 2015 which has been passed by Lok Sabha on March 3, 2015. It was passed by Rajya Sabha on March 20, 2015.

Anti-Poor Aspects of the Ordinance and Bill

The CAG audit reports on mining receipts in states such as Orissa, Goa and Karnataka have pointed to the need for a rigorous mechanism on renewal of mining lease. Instead of strengthening the processes, MMDR Bill prescribes a blanket extension.

Granting Prospecting License-cum-Mining Lease through competitive bidding for minerals has a potential to create situations as witnessed in production sharing contracts on hydrocarbon¹⁶. Moreover, CAG audit of disinvestment processes in the past have shown that the public sector will lose and adhering to the auction route may lead to cartel formation.

By inserting a proviso in clause (b) of sub-section (1) of Section 6, MMDR Bill allows the central government to increase the area limits with respect to prospecting license or mining lease without specifying any ceiling. With this proviso that allows an indefinite increase in the area, the Ordinance will severely affect people living in mineral rich regions. Even developed mining economies like Australia are reducing mining lease areas to avoid non-mineralised zones in lease areas. In Australia, maximum lease area allowed was 10 square kilometers till 2006 and now it is limited to the area of ore bodies in a prospected site plus infrastructure for mineral concession.

With the proposal to set up a District Mineral Foundation (DMF) in the Ordinance and Bill, the social commitment towards development of affected communities has been significantly watered down. It represents moving away from the concept of benefit sharing as was discussed in earlier versions of MMDR Bill. Clause (4) of this sub section prescribes an upper limit of lease holder's contribution to DMF. In earlier versions, there was a provision of granting 26 per cent equity to affected community. While another draft of the Bill attempted to replace this provision by making the lease holder contribute 100 per cent equivalent of royalty, the Ordinance and Bill arbitrarily prescribed the leaseholder's contribution to not more than 33 per cent of the royalties for different minerals and regions.

Recommendations

- **Ensuring Free, Prior and Informed Consent of mining affected communities before commencing mining operations.**

The MMDR Bill is completely silent on obtaining consent from the communities before mining operations are initiated especially in tribal regions. All applications for mining concessions should be put before the Panchayats. As a practice, Gram Sabha should be convened to discuss the proposals and accept objections for at least 30 days thereafter. Special provisions should be included for Scheduled Areas along the lines of Samata Judgment¹⁷. Necessary safeguards should be built into the MMDR legislation and Minor Minerals Concessions Rules to avoid undermining the PESA structure of governance. Authorities should be required to seek the consent of the Tribes Advisory Council.

- **Grant 26 per cent share of equity to affected communities so they become stakeholders in the mining life cycle.**

The MMDR Bill arbitrarily prescribes 33 per cent of royalty as an upper limit to contribution by lease holder to the DMF. Affected communities and CSOs have for long been demanding that publicly-owned companies award 26 per cent equity to affected communities. Where the lease holder is not a publicly-owned company but an individual, 26 per cent share of profit (after taxes) should be awarded to the affected community as annuity. The right of the affected communities to benefit from natural resources should be respected by recognizing them in Fifth Schedule areas and elsewhere.

- **Restrict the size and duration of mining concessions to protect indiscriminate use of community land.**

The MMDR Bill has gone a step beyond the earlier drafts of Bill by not mentioning any limit to the size of lease. Mining-affected communities have consistently opposed efforts to extend the size of mining lease and different kinds of concessions up to 100 sq km and argue that such large expanse of land would overrun several commons making any kind of scrutiny impossible. More so, in terms of mining revenues as well as regulatory supervision, several mineral-rich states have shown that the present mechanism leaves much to be desired; this has also been substantiated by many CAG audit reports.

Similarly, while earlier drafts of the bill had sought to extend the duration of mining lease by 20 to 30 years, the Ordinance and Bill extend the duration of lease to

50 years. In addition, the Ordinance applies a blanket extension of mining leases for 20 to 30 more years. This again would affect effective and strict scrutiny. The duration of lease should be 10 years¹⁸.

- **Define 'Affected Persons' and 'reasonable compensation' more precisely.**

The MMDR Bill does not include definitions of affected persons and reasonable compensation. Responding to several earlier drafts, mining affected communities have voiced demands to define 'affected persons' on unambiguous indicators that capture the social, cultural and environmental impacts. It should not only include people losing lands to a mining project, but also those whose livelihood is affected. There should be a compensation amount defined and incorporated into the mining legislation that needs to be linked to inflationary indices such as Consumer Price Index.

- **Strengthen Institutional Framework for ensuring sustainable mining practices.**

The Ministry of Mines has committed itself to the Sustainable Development Framework (SDF) and relevant guidelines have been prepared.¹⁹ Guidelines for environmental and social sustainability should rely on clear indicators that can capture the social and environmental impacts. The MMDR Bill fails to clarify which parties are responsible for implementing SDF, monitoring it, and enforcing that no mining takes place outside its purview.

Similarly, Environmental Impact Assessment (EIA) should be made more transparent and include provisions ensuring cancellation of environmental clearances. However, the Ministry of Environment, Forests and Climate Change constituted High Level Committee (T Subramanian Committee) to review green laws chose not to follow the evidence and sought to dilute the already weak environmental regulations²⁰. Mining legislation should also mandate disclosures and impose dissuasive penalties for violations.

In conclusion, the MMDR Bill, 2015 is a retrograde step that dilutes progressive clauses contained in the lapsed MMDR Bill 2011. It aims to accelerate expansion of the mining sector without any regulatory and monitoring checks, which is likely to create more social and environmental conflicts rather than resolve them. It is essential to roll back these regressive provisions of the law to ensure a socially and environmentally-just process that empowers communities in the decision-making related to mineral resources.

Notes

- 1 The MMDR Ordinance, 2015 has been issued under Article 123 of the Indian Constitution, which gives powers to the President of India to promulgate such ordinances when parliament is in recess. The ordinance is only valid for only for six weeks after the reassembling of the Parliament. The President can also withdraw it at any time.
- 2 PRS Legislative Research (2015) Bill Summary - The Mines and Minerals (Development and Regulation) Amendment Bill, 2015 (<http://www.prsindia.org/uploads/media/Mines/Bill%20Summary-MMDR%20Bill.pdf>), last accessed March 2015.
- 3 This note is an update on the existing Oxfam position in this regard and can be accessed at Dubochet, Lucy (2012), India's Mining Regulation: A Chance to Correct Course, Oxfam India Policy Brief, No.1, Oxfam India, New Delhi.
- 4 Government of India (2014) 'Annual Report 2013-14', Delhi: Ministry of Mines (<http://mines.gov.in/annual2013t14e.pdf>), last accessed February 2015.
- 5 B. Kalluri et al (2010) 'India's Childhood in the "Pits"', Delhi: Dhaatri Resource Centre for Women and Children, Haq: Centre for Child Rights. P. 5 (www.haqrc.org/publications/India%E2%80%99s-childhood-pits-report-impacts-mining-children-india) Last accessed February 2015.
- 6 Government of India (2011) 'Unlocking the Potential of the Indian Minerals Sector', Delhi: Ministry of mines (www.mines.nic.in/writereaddata/filelinks/7a47c611_Unlocking_the_potential_of_the_indian_minerals_sector_-_FINAL.pdf) Last accessed February 2015.
- 7 Mining sector holds a significant position on this campaign. See for details, <http://www.makeinindia.com/sector/mining/> Last accessed February 2015.
- 8 For the text of Mine and Minerals (Regulations and Development) Ordinance as promulgated on January 12, 2015 see <http://mines.nic.in/..%5Cwritereaddata%5CContentlinks%5C512207fe1e414515b6e4d5164056929d.pdf> Last accessed February 2015.
- 9 Many such instances of extremely poor monitoring and inaction on the observed violations get noticed in audit findings on mining revenue if one examines audit reports on Revenue Receipts by CAG of India for several mineral rich states. For example, see Performance Audit on Control and Systems for Sustainable Mining in Karnataka, CAG of India, Report No 2 of 2012.
- 10 See for details, Reports of Justice M B Shah Commission of Inquiry. <http://mines.nic.in/index.aspx?lid=673&level=1&chk=24dfe45y5edf5e3>
- 11 Note that this figure excludes minor minerals, petroleum (crude), natural gas and atomic minerals. Government of India (2014) 'Annual Report 2013-14', Delhi: Ministry of Mines (<http://mines.gov.in/annual2013t14e.pdf>), Last accessed February 2015.
- 12 Poverty estimates based on the Tendulkar committee methodology. Government of India (2012) 'Press Note on Poverty Estimates', Delhi: Planning Commission, www.planningcommission.nic.in/news/press_pov1903.pdf Last accessed February 2015. Contribution to GDP estimates as per Indian Minerals Yearbook, Indian Bureau of Mines, Nagpur.
- 13 <http://cseindia.org/mining/pdf/miningpub.pdf>
- 14 <http://www.mmpindia.in/pressrelease432005.htm>
- 15 A more elaborate exposition of Oxfam's position on the content and significant features of the Act can be accessed at Dubochet, Lucy (2012), India's Mining Regulation: A Chance to Correct Course, Oxfam India Policy Brief, No.1, Oxfam India, New Delhi.
- 16 See for details CAG of India's Performance Audit report on Hydrocarbon Production Sharing Contracts. Report No 19 of 2011-12. http://www.saiindia.gov.in/english/home/Our_Products/Audit_Report/Government_Wise/union_audit/recent_reports/union_performance/2011_2012/Civil_%20Performance_Audits/Report_19/Report_19.html Also see the recollection of the process of auditing these Production Sharing Contracts granted by Ministry of Petroleum and Natural Gas under New Exploration Licensing Policy in Rai, Vinod (2014) Not Just an Accountant: The Diary of the Nation's Conscience Keeper, Chapter 9 titled 'A Slippery Deal: Gas Exploration', pp. 158-174.
- 17 <http://www.mmpindia.in/pressrelease432005.htm>
- 18 There is a need to reassess the leases expiring in near future. During the 12th Plan period, 1800 leases would expire with a cumulative area of over 1 lakh hectares (Source: IBM). Even a cursory look at the revenue audit reports by CAG of India shows that the present mechanism for renewing mining licenses leaves much to be desired. Despite such observations, the Public Accounts Committee has failed to reverse this trend. Restraining the time period of lease to 10 years would enable the monitoring and renewal mechanism to work in better fashion than allowing a mining lease for 50 years and extending all the leases that have recently lapsed, to a further lease of life by 20 to 30 years
- 19 <http://mines.nic.in/writereaddata%5CContentlinks%5Cfa998a95e60c48c3b40a6f0ab0101332.pdf>
- 20 http://envfor.nic.in/sites/default/files/press-releases/Final_Report_of_HLC.pdf

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