

## Law relating to mining in India a legal study

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**Abstract:** *India has a vast economic potential in the mineral sector owing to its significant and diverse mineral resources. To a greater extent, the potential of mining sector to contribute towards the economic development of the country is influenced by legal and policy framework. Nevertheless, the mining sector at present is challenged by innumerable problems that affect its optimal capacity to contribute towards economic development. A comprehensive legal policy framework, acts and legislations are necessary to ensure that the development of this sector is achieved without harming the social, economic or environmental structure of the nation. In spite of a quite elaborate mining legislation in India there are several gaps that need to be bridged with proper policy reforms and counter the deficiencies that hamper the efficient and effective management of the mineral sector. In the wake of above, a critical assessment of India's mineral policies with respect to national and international trends and the position and challenges before and after the formulation of National Mineral Policy (NMP) has been outlined.*

**Keywords:** *Mineral Policy; Sustainable Development; Securitization*

### Introduction

Mining is a major economic activity in India and the industry is the backbone of the The tradition of mining in the region is ancient and underwent modernization alongside the rest of the world as India has gained independence in 1947. The economic reforms of 1991 and the 1993 National Mining Policy further helped the growth of the mining sector. India's minerals range from both metallic and non-metallic types. The metallic minerals comprise ferrous and non-ferrous minerals, while the nonmetallic minerals comprise mineral fuels, precious stones, among others.

D.R. Khullar holds that mining in India depends on over 3,100 mines, out of which over 550 are fuel mines, over 560 are mines for metals, and over 1970 are mines for extraction of nonmetals. The figure given by S.N. Padhi is about 600 coal mines, 35 oil projects and 6,000 metalliferous mines of different sizes employing over one million persons on a daily average basis. Both open cast mining and underground mining operations are carried out and drilling/pumping is undertaken for extracting liquid or gaseous fuels. The country produces and works with roughly 100 minerals, which are an important source for earning foreign exchange as well as satisfying domestic needs. India also exports iron ore, titanium, manganese, bauxite, granite, and imports cobalt, mercury, graphite etc.

Unless controlled by other departments of the Government of India mineral resources of the country are surveyed by the Indian Ministry of Mines, which also regulates the manner in which these resources are used. The ministry oversees the various aspects of industrial mining in the country. Both the Geological Survey of India and the Indian Bureau of Mines are also controlled by the ministry. Natural gas, petroleum and atomic minerals are exempt from the various activities of the Indian Ministry of Mines.

### History of Mining in India

The history of metallurgy in the Indian subcontinent began prior to the 3rd millennium BCE and continued well into the British Raj. Metals and related concepts were mentioned in various early Vedic age texts. The Rigveda already uses the Sanskrit term **Ayas** (metal). The Indian cultural and commercial contacts with the Near East and the Greco-Roman world enabled an exchange of

metallurgic sciences. With the advent of the Mughals, India's Mughal Empire (established: April 21, 1526—ended: September 21, 1857) further improved the established tradition of metallurgy and metal working in India.

The imperial policies of the British Raj led to stagnation of metallurgy in India as the British regulated mining and metallurgy—used in India previously by its rulers to build armies and resist England during various wars.

### **Indus Valley Civilization**

The copper-bronze metallurgy in the Harappan civilization was widespread and had a high variety and quality.<sup>[11]</sup> The early use of iron may have developed from the practice of copper-smelting. While there is to date no proven evidence for smelted iron in the Indus Valley Civilization, iron ore and iron items have been unearthed in eight Indus Valley sites, some of them dating to before 2600 BCE. There remains the possibility that some of these items were made of smelted iron, and the term "krsna ayas" might possibly also refer to these iron items, even if they are not made of smelted iron. Lothali copper is unusually pure, lacking the arsenic typically used by coppersmiths across the rest of the Indus valley. Workers mixed tin with copper for the manufacture of celts, arrowheads, fishhooks, chisels, bangles, rings, drills and spearheads, although weapon manufacturing was minor.

### **AN OVERVIEW OF MINING IN INDIA**

India currently produces nearly 89 minerals under different groups such as fuel minerals, metallic minerals, non-metallic minerals, atomic minerals and minor minerals.

In India, 80% of mining is in coal and the balance 20% is in various metals and other raw materials such as gold, copper, iron, lead, bauxite, zinc and uranium. India with diverse and significant mineral resources is the leading producer of some of the minerals. India is not endowed with all the requisite mineral resources. Of the 89 minerals produced in India, 4 are fuel minerals, 11 metallic, 52 non-metallic and 22 minor minerals.

India is the largest producer of mica blocks and mica splittings; ranks third in the production of coal & lignite, barytes and chromite; 4th in iron ore, 6th in bauxite and manganese ore, 10th in aluminium and 11th in crude steel. Iron-ore, copper-ore, chromite and or zinc concentrates, gold, manganese ore, bauxite, lead concentrates, and silver account for the entire metallic production. Limestone, magnesite, dolomite, barytes, kaolin, gypsum, apatite & phosphorite, steatite and fluorite account for 92 percent of non-metallic minerals. Demand for minerals is expected to grow very fast, due to increasing levels of consumption, infrastructure development, and growth of the economy. Management of mineral resources has, therefore, to be closely integrated with the overall strategy of development and exploitation of minerals is to be guided by long-term national goals and perspectives.

- India has vast minerals potential with mining leases granted for longer durations of 20 to 30 years.
- The demand for various metals and minerals will grow substantially over the next 15 years.
- The power and cement industries also aid growth in the metals and mining sector.
- India's strategic location enables convenient exports.
- India's per capita steel consumption is four times lower than the global average.

## ISSUES AND CHALLENGES

- **Plagued by poor regulations, weak institutions, inadequate monitoring, and feeble enforcement:** Regulatory loopholes abound in the mining sector, allowing mining companies to get away with practices which should be illegal. Most institutions related to mining, including those responsible for monitoring, are weak, do not have the capacity to perform to their potential, and are marred by governance failures. The enforcement of laws and regulations is notable only for its feebleness.
- **Mine allocation suffers from non-transparency and arbitrariness:** This was made amply clear during the coal scam; the Supreme Court, in its judgement of August 2014, declared that all the 218 coal blocks allocated between 1993 and 2010 are illegal as they have been allotted in an “ad hoc and casual” manner by the Central government. This ad hocism is true for all minerals.
- **The current mechanism of royalty and taxes fails to equitably distribute the windfall profits made by companies:** A clear example of how easily windfall profits are siphoned off by companies, leaving state governments and the mining-affected communities high and dry, is the peak of iron ore mining between 2004 and 2010, when royalty for the ore was between Rs 16 and Rs 27 per tonne, while it was being sold for as high as Rs 4,000 per tonne.
- **Suffers from low investment in exploration, development of technology and implementation of best practices:** The exploration of new minerals, particularly deep seated strategic minerals, the development of new technology, and the implementation of the best mining practices are critically neglected areas in the country’s mining policy and investment budget.
- **The legacy of captive mines:** Captive mines continue to exist because of the assumption that they lower costs of goods and services in the country. The opposite is true. Today, companies with captive iron ore and coal mines sell their products in the same market as companies which buy these raw materials from the open market. Captive mines, therefore, distort the market. The humongous corruption in the allocation of captive mines and the subsequent illegalities also demonstrate the huge rent-seeking potential in the allocation of captive mines.

## IMPACT ON ENVIRONMENT

Mining activity puts tremendous pressure on local flora and fauna, particularly where division of forest land for mining takes place. The effect of mining on ground water level, silting of surrounding water bodies and land are also of great concern. Coal mining contributes greatly towards the economic development of the nation, although it also has a great impact upon human health. It also has an impact on the socio-cultural<sup>[18]</sup> aspect of the workers and people residing in and around the coal mining areas. Thus, a holistic approach to mining activities, keeping in mind the concerns regarding the local habitats and ecosystem, is necessary. This requires identification of various sites where minerals exist as well as various other factors ranging from an appropriate angle of slope of the overburden dumps, safe disposal drains, and safe techniques for various silt control structures etc. In India, coal companies are now working towards “clean coal” strategies, which aim to reduce the environmental impact. The reduced ash contents of the washed coal increases the thermal efficiency of combustion. This has a direct impact on reducing emission of pollutants. The coal washing process requires extra water, but it can help us progress towards a pollution free society.

The burning of coal releases harmful substances such as sulphur dioxide, nitrogen oxide, carbon dioxide, as well as particulates of dust and ash. Dangerous<sup>[19]</sup> levels of air and water pollution have been recorded in coal burning areas. It is globally accepted that coal mining adversely affects the local and global environment. Mining adversely affects the local

environment in that it destroys vegetation, causes extensive soil erosion and alters microbial communities. Coal mining also affects the global environment through the release of coal bed methane, which is about 30 times as powerful as a greenhouse gas such as carbon dioxide. Coal mining thus adversely impacts air quality standards (Agarwal, 1991). Underground mining causes a depletion of groundwater in many places, as well as subsidence etc. resulting in degradation of soil and land.

### **Legal Framework on Minerals mining in India**

The Mines and Minerals (Development & Regulation) Act (MMDR<sup>221</sup>), 1957 is the principal legislation that governs the mineral and mining sector in India. The Act is a central legislation in force for regulation of mining operations in India. Under the act, minerals are taken under two broad heads, major minerals and minor minerals. The list is lucid.

The power to frame policy and legislation on the minor minerals are entirely the subjected and delegated to the State Governments while policy and legislation relating to the major minerals are dealt by the Ministry of Mines under Union /Central Government of India. The central government has the power to notify “minor minerals” under section 3 (e) of the MMDR Act, 1957. On the other hand, as per Section 15 of the MMDR Act, 1957 State Governments have complete powers for making Rules for grant of concessions in respect of extraction of minor minerals and levy and collection of royalty on minor minerals.

Whereas in case of offshore areas (territorial Waters, Continental Shelf, Exclusive Economic zone and other Maritime zones of India), the ownership of minerals vests exclusively with the Central Government. In order to regulate the mining and development of minerals in the offshore area, the Parliament has enacted the “Offshore Areas Minerals (Development and Regulation Act, 2002”. The Act empowers the Central Government to grant mineral concessions for offshore areas and collect royalty. The Indian Bureau of Mines has been notified as the administrative authority for concession management of offshore areas. Developments under The Mines and Minerals (Development and Regulation) Act, 1957

Where there is inadequate evidence to show the existence of mineral contents of any notified mineral in respect of any area, a State Government has to obtain previous approval from the Central Government for granting a prospect licence-cum-mining lease for the said notified mineral in areas in accordance with the procedure laid down in section 11.

### **Judicial approach towards mining in India**

#### **Order of the Supreme Court of India regarding illegal extraction of coal in the State of Meghalaya, 28/03/2018**

Order of the Supreme Court of India in the matter of KaHimaNongstoin Land Owners, Coal Traders And Producers Association Vs All Dimasa Students Union, Dima Hasao District Committee & Others dated 28/03/2018 regarding illegal extraction of coal in the State of Meghalaya.

On **21.09.2016 Supreme Court passed a order** which allowed the petitioners as well as the respondents who have mined the coal permission to transport the coal on payment of royalty and other fees. The extracted coal can be transported from 1st October, 2016 till 31st May, 2017. It is further directed that no other extraction shall take place in the meantime.

The State of Meghalaya has filed the instant application wherein it is stated that approximately 5.00 lakhs MT of coal is still lying on various places and time up to 31st May, 2018 be granted to transport the aforesaid coal.

**Supreme Court extends the time for transportation of the extracted quantity of approximately 5.00 lakhs MT lying in various places in the State of Meghalaya, upto 31.05.2018** in the same terms

and conditions as contained in the order dated 21.09.2016. It shall also be ensured that while transporting the aforesaid quantity of coal, it shall not lead to creation of any type of pollution.

**Order of the Supreme Court of India regarding illegal stone mining in Braj region, 27/03/2018**

Order of the Supreme Court of India in the matter of Neelambar Baba & Others Vs Union of India & Others dated 27/03/2018 regarding stoppage of illegal stone mining, crushing and blasting activities in illegal manner and for the preservation and protection of the Braj region, forests, hills and its wildlife in the above said region and also to restore the Braj region for its cultural and historical importance as an eco-tourism destination.

Ministry of Environment, Forest and Climate Change (MOEF) has filed two affidavits which contain the interim report as well as the final report. The final report states that all the 15 stone crushers under reference are in abandoned state and no machinery or equipment are in place on the land of the stone crushers. 202 numbers of stone quarries which were leased and were in operation on revenue land in the Deeg and Kannan Tehsils in Bharatpur District of Rajasthan have been closed and the entire land has been handed over to Forest Department of Rajasthan. The degraded land is being rehabilitated in phased manner through afforestation and soil and moisture conservation works by the Forest Department of Rajasthan.

**Order of the Supreme Court of India regarding illegal mining in Rohtas region of Bihar, 06/03/2018**

Order of the Supreme Court of India in the matter of In Re: T. N. Godavarman Thirumulpad Vs Union of India & Others dated 06/03/2018 regarding illegal mining in Rohtas region of Bihar. The Apex Court took note of the report submitted by the Central Empowered Committee (CEC) and that the State of Bihar is acting on it. Supreme Court directs that this should be stated on affidavit and a status report be filed by the State of Bihar with regard to the implementation of the recommendations made by the CEC in its report.

**Order of the National Green Tribunal regarding illegal sand and boulders mining within the DehingPatkai Wildlife Sanctuary, Digboi Division, Assam, 25/01/2018**

Order of the National Green Tribunal (Eastern Zone Bench, Kolkata) in the matter of R. Sreedhar Vs Union of India & Others dated 25/01/2018 regarding illegal sand and boulders mining within the DehingPatkai Wildlife Sanctuary/MakumPani Reserved Forest, Digboi Division, Assam.

The Original Application pertains to :

- (i) illegal sand and boulders mining within the DehingPatkai Wildlife Sanctuary/MakumPani Reserved Forest, Digboi Division,
- (ii) illegal coal mining and operation of the coke oven plants around Margherita and
- (iii) impact of the North Eastern Coalfields due to overburden and Acid Mine Drainage.

The mining in DehingPatkai Wildlife Sanctuary is alleged to be taking place in the river bed of the Dirak river on the Assam-Arunachal Pradesh border by various mechanical means adversely affecting the dynamics of the river flow and change in the river course as well affecting the river Namtok resulting in the increase in erosion of the bank and adverse impact on the riverine ecosystem.

NGT directs the Assam State Pollution Control Board and the District Mining Officers and District Magistrates Tinsukia and Tinsukia Districts of Assam, and Tirap district in Arunachal Pradesh to inspect the area in question and verify on the correctness of the allegations contained in the OA. If

there are illegal mining and illegal operation of the coal mines and coke oven units in the area as alleged, appropriate action be instituted.

#### **Order of the National Green Tribunal regarding illegal mining in Gujarat, 05/01/2018**

Order of the National Green Tribunal in the matter of National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat) dated 05/01/2018 regarding illegal mining in Gujarat. Counsel appearing on behalf of the State of Gujarat has informed the Court that 7 noticees have filed their replies and others have yet to respond out of 28. NGT grants time to other noticees to file their responses before the next date of hearing (15/02/2018).

### **CONCLUSION**

The study aimed that evaluating the existing normative or legal and institutional frameworks for the protection and conservation of natural resources makes an attempt to establish that the prevailing norms and structures are in affective in maintaining balance between economic development and sustainable use of natural resources, so that the apparent conflict between environment and development is properly reconciled in India. Natural resources such as water, air, land, biodiversity, genetic resources, forests, livestock's and fisheries forming the very foundation of human survival, progress and prosperity have been degrading fast, and the unprecedented pace of their erosion is making life of every people miserable.

The exploitation of natural resources is a key factor in economic growth and development, but one that can have serious negative environmental and socio-economic impacts. These include the destruction and degradation of old growth forests, the depletion and pollution of water resources, the decimation of fisheries, extinction of wildlife, and the despoliation of land in order to extract minerals. The problem that India faces is its unlimited development aspirations and its limited natural resources. This has given rise to a conflict between the state committed to development in the name of "the greater common good" with catastrophic effects on the rural population mainly, marginalized, poor, women, tribes and peasants.<sup>2</sup> It is said that the current ecological movements have emerged as the peoples responds to this new threat to their survival and as a demand for the ecological conversation of their vital life support systems.