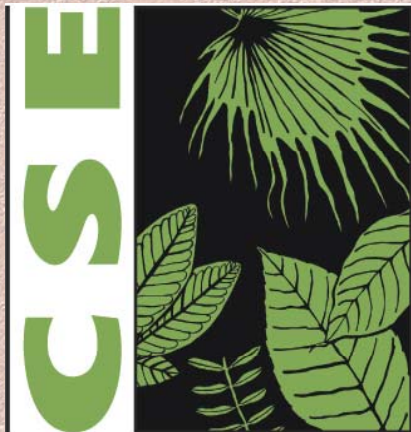


The Mines and Minerals (Development and Regulation) Amendment Act 2015

Will the new law improve the social and environment performance of the mining sector?



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Major issues and challenges of the mining sector today

- Suffers from poor regulations, weak institutions, inadequate monitoring and feeble enforcement.
- Non-transparency and arbitrariness in mine allocations.
- Current mechanism of royalty and taxes fails to equitably distribute the windfall profits made by companies.
- Low investment in exploration (particularly strategic minerals), development of technology and implementation of best practices.
- The legacy of captive mines – distorting the market
- Not benefitting affected communities - most mining districts in the country are also the poorest.
- Has one of the poorest environment performance; the burden of abandoned mines.

One lapsed Bill, one passed Act

- The Mines and Minerals (Development and Regulation) Bill (MMDR), 2011 to replace Mines and Minerals (Development and Regulation) Act (MMDR), 1957 – **lapsed in 2014**
- Mines and Minerals (Development and Regulation) Amendment Act (MMDR), 2015 – **passed in 2015**

MMDR Amendment Act 2015

Main objectives

- To eliminate discretion in the grant of mineral concessions, bring in transparency in the allocation of mineral resources.
- To simplify procedures and remove delays in decision-making; provide impetus to the mining sector.
- To encourage exploration and investment in mining sector
- To develop stronger provisions to check illegal mining.
- To safeguard interest of affected persons

Major provisions introduced

- Introduces **auction mechanism** for granting mineral concession for all minerals- mining leases and prospecting-cum-mining leases.
- Grant mining **leases for 50 year period**, as opposed to 30 year plus 20 year renewal provision that existed. The lease period for captive mines extended till March 2030, or for a period of 50 years from the date when the lease was granted. All leases will be re-auctioned after 50 years.
- Create **Special Courts** to deal with mining offences, **increases fines**.
- Creation of **District Mineral Foundation** for benefit of mining affected communities.

Will the Act meet its objectives? Would it create more problems?

- Reduce discretion and increase transparency in the allocation of mineral resources
- Puts in place regulatory and facilitative institutions for transparent and accountable functioning of the mining sector, including check on illegal mining
- Benefit and safeguard the interests of the local communities

#1: Reduce discretion & increase transparency

- Auctioning a much more transparent process than “first-in-time”
 - It is the best way to allocate minerals where the deposits can be accurately established and proper valuation can be done. Good for surface minerals – coal, iron ore, lime stone etc.
 - Where the valuation of mineral deposits cannot be done, auctioning can result in undervaluation of minerals and subsequent lower revenue earnings for the state government; or overvaluation, resulting in the inability of the concession holder to meet commitments.
 - Auctioning is not suited for **prospecting cum mine leases**.

Problem 1: Auctioning of unknown deposits and prospecting will create huge problems

- For auctioning to happen the right way, strong & scientifically competent institutions are required to establish reserves and valuation. In the absence of such institutions, auctioning can be manipulated.
- Across the world prospecting given on first-in-time basis because mineral valuation can not be done. Auctioning of prospecting is like shooting in dark.
- Auctioning of prospecting cum mine lease, as in 2015 Act, is prone to mismanagement and corruption.
- Auctioning is revenue maximization (by auctioning); Auctioning without social and environmental safeguards to discourage mining in ecologically fragile and sensitive areas, will create huge problems.

#2: Transparent and accountable mining sector, including check on illegal mining

Has completely failed to take into consideration the need to improve governance and regulations in the mining sector.

- The major reforms proposed under in the 2015 Amendment with regard to governance are- introduction of an auction mechanism for allocating mining concessions; provisions for timely decisions; increasing penalty for violations and creation of special courts.
- Completely misses out on the major problems with mining governance - existence of poor and multiple regulations; weak institutions; discretionary decision-making powers; inadequate monitoring and feeble enforcement.
- For instance, with respect to environment, health and safety management in the mines, currently four regulatory institutions are involved- MoEF&CC, IBM, SPCBs (and PCCs), Directorate General of Mines Safety.
- A lot of overlap in the responsibilities of these institutions, with each having very little capacity to monitor and enforce the law.

#2: Transparent and accountable mining sector, including check on illegal mining

- Increasing penalty and setting up new courts is a double-edged sword
- Simply increasing penalty for violations within the existing institutional framework makes rent-seeking behavior even more lucrative and will not be effective in curbing illegality.
- The 2011 Bill had provisions for serious institutional reforms that the 2015 Amendment completely overlooked-
 - Setting up a National Mineral Royalty Commission to review and suggest revisions in royalty rates and dead rent rates.
 - Establishment of National and State Mineral Funds to support research in and development of sustainable mining.
 - Developing capacity of IBM and of State Directorates for detecting and preventing illegal mining, and promoting scientific mining
- **2015 Act will not lead to any significant improvement in mining governance**

Problem 2: Not good for environment

- 2015 Amendment allows, all mining leases to be granted for 50 years. The lease for existing mines has also been extended to 50 years. After expiry, leases can be re-auctioned.
- The 50 year provision creates multiple problems:
 - Keeping thousands of mines open at one point of time will only increase pollution as every open mine is a source of pollution.
 - Long lease period will also create difficulty in establishing appropriate financial guarantees for mine closure.
 - Long lease period with subsequent re-auctioning provision will give excuse to leaseholders to keep the mines open and shift the burden of rehabilitation to future generation; total defeat of the idea of sustainable development.
 - Bring back the practice of “dig and run”, adding to India’s poor legacy of orphaned mines.

Problem 3: Promotes inefficient mining

- Promotes inefficient captive mining- extends the lease period for captive mines till March 2030, or for a period of 50 years from the date when the lease was granted, whichever among the two is more.
 - There is repeated evidence of the arbitrariness and the inefficiency captive mining entails- coal scam.
 - Captive mining also disincentivises the efficient use of mineral resources by the end-user and encourages poor mining practices.
 - It is a proven fact that that companies acquiring raw material and energy from the open market at a higher cost have innovated in technology to improve efficiency, while those with mines do not have any incentive to do so. There is also poor mines management .

Problem 4: Not in line with “co-operative federalism”

- 2015 Act allows huge scope for interference by the Central government –
- Under Sections 10B and 11, the bidding parameters as well as the terms and conditions for auctioning are to be determined by the Central government. the Centre can effectively dictate the process by setting the rules for auction.
- The Centre will now also have the power to give directions to the state governments, as outlined under Section 20A, for implementation of various provisions of the MMDR Act. This is in addition to the power of the Central government to revise any order passed by the state with respect to all minerals other than minor minerals, as specified under Section 30 of the Act.
- With the Central government having such over-riding powers, states have been marginalised

#3: Benefit and safeguard the interests of the local communities

- In the 2011 Bill, notification of public lands for all types of mining concessions had to be done in consultation with the gram sabha or district council in fifth and sixth schedule areas. In non-schedule areas, district panchayats were required to be consulted – **removed in 2015 Act**
- **2015 Act has denied and removed** the provision of compensation, rehabilitation and resettlement of persons having usufruct and traditional rights over land and resources which was there in the In the 2011 Bill. Now all compensation, rehabilitation and resettlement is limited to occupational rights, similar to 1957 Act.
- **2015 Act does not safeguards the rights of communities and empowers local governments**

Problem 5: Marginalizes communities and institutions of local government

- Needs to be considered with other ongoing regulatory reforms:
 - The Right to Fair Compensation and Transparency in Land Acquisitions, Rehabilitation and Resettlement Amendment Bill, 2015,
 - Report of the High Level Committee of the MoEF&CC chaired by T S R Subramanian (November, 2014), suggesting revisions in all major environmental laws.
- While, the MMDR Amendment Act, 2015, discourages consultation and excludes affected people from decision-making from the mining sector, the Land Bill removes the clause requiring community consent.
- The Subramanian Committee report recommends fast-tracking of environment and forest clearances for mining projects.

If all dots are joined, it points to one fact – decision will be taken by the government, not people

#3: Benefit and safeguard the interests of the local communities

- Creates District Mineral Foundation (DMF) to share benefits of mining with local communities.
- In the 2011 Bill, for major minerals, leaseholder had to pay the DMF, an amount equivalent to the royalty paid during the financial year; for coal and lignite, it was an amount equal to 26% of the profit after tax.
- The 2015 Amendment- leaseholders are to pay **not more than one-third** of the royalty for all minerals, lowest limit however not specified - **reduction in share of benefits.**
- Specificity of DMF not clearly outlined as was in the 2011 Bill;,, States to decide how fund will be used
- **2015 Act, if implemented well, will benefit communities**