

Mines and Minerals (Development and Regulation) Bill 2011

Background Note

Introduction

Mineral extraction today is dictated by the market forces and cartels controlling the price according to the profitability rather than for the benefit of society or a community. In this regard, after the approval of the Union Cabinet, the Mines and Minerals (Development and Regulation) Bill 2011 was introduced in the Parliament in December 2011, on the terms of National Mineral Policy, 2008. This bill would also repeal the existing Mines and Minerals (Development and Regulation) Act, 1957. It is currently pending with the Standing Committee on Coal and Steel in the Parliament.

The MMDR Bill, 2011 empowers the central government to intervene in cases of illegal mining where the concerned state government fails to take action against illegal mining. The Bill proposes to make it mandatory for coal miners to share 26% of their net profits with project-affected people. Non-coal miners (iron, bauxite, manganese, copper, aluminum, gold, and silver) will be required to pay 100% of the royalty on their production to those who were displaced due to the project. This rule applies to metal companies too, which also have their own mines. The draft bill also suggests several provisions for checking illegal mining as well as setting up special courts for disposing the cases related to illegal mining.

In 2005, the Government of India constituted a High Level Committee (HLC) under the able Chairmanship of Shri Anwarul Hoda, then Member Planning Commission to go into the whole gamut of issues relating to development of the mineral sector. It also suggested evolving a mining code adapted to the best international practices, streamlining and simplifying procedures for grant of mineral concessions to reduce delays, etc. The HLC submitted its report in 2006, and based on its recommendations the 'New Mineral Policy' (NMP) was approved and adopted by the Government in 2008. The NMP 2008 was supposed to serve as the foundation for any new legislation

Objectives

The new MMDR Bill, 2011, aims to introduce better legislative environment for attracting investment and technology into the mining sector by invoking the following:

- States may call for applications in notified areas of known mineralization for prospecting based on technical knowledge, value addition, end-use proposed ore -linkage etc and to invite financial bid; (The provision which specifies the bidding criteria for which weightages may be assigned uses the phrase "all or any....". This gives huge discretion to any government to use or drop any of these criteria as per their wish. This would also ensure that there would be no universality in approach in different parts of India and would deter transparency)
- States may grant direct mining concessions through bidding based on a prospecting report and feasibility study in notified areas where data of minerals is adequate for the purpose; (wrong statement as data is not adequate in case of prospecting report)
- State Governments may set up a minimum floor price for competitive bidding;
- Special provisions for allowing mining of small deposits in cluster, where cooperatives can apply; and includes deposits in 5th and 6th schedule to a co operative of schedule tribe

- Currently there is National Mining Regulatory Authority for major minerals. State Governments may set up similar Authority at State level for minor minerals;
- Imposition of a Central cess and a State cess, and setting up of Mineral Funds at National and State Level for capacity creation;
- For the purpose of sharing the benefits of mining with persons or families having occupation, usufruct or traditional rights in mining areas, and for local area infrastructure, creation an amount equal to royalty in case of mineral other than coal, and 26% of net profits, in the case of coal, has been proposed to be credited each year to district Level Mineral Foundation;
- Sustainable and scientific mining through provision for a Sustainable Development Framework;
- Consultation with local community before notifying an area for grant of concession, and for approval of Mine Closure Plans;
- Enhanced penalties for violation of provisions of the Act, including debarment of person convicted of illegal mining for future grants and termination of all mineral concessions held by such person;
- Establishment of Special Courts at the State level for speedier disposal of the cases of illegal mining.¹

Impact Of The Bill On Various Sections Of Society

1. Existence of corporate and police excesses, the implementation of which could lead to forcible land acquisitions from tribals and land owners.
2. Problems of women workers- low wages, uncertain work, mine accidents, health problems, and unsafe working and poor living conditions. Women are not the direct beneficiaries of rehabilitation program and hence women headed households have become impoverished when it comes to benefitting from rehabilitation policies.
3. Mining industries pollute water bodies by dumping mine tailing, depleted ground water affecting local needs, which ultimately communities and workers are forced to consume in the surrounding areas. Hence safeguards on regulating and safe disposal of waste in consonance with environmental norms should be incorporated.
4. Resettlement and improper rehabilitation processes, lack of compensation or employment due to corrupt practices.
5. Complex and dicey provisions for compensation to affected individuals via shareholding at the behest of corporate companies, unsupervised by any authority. Furthermore, this mode of compensation brings in with it additional risks of share markets to an illiterate villager.
6. Destruction of agriculture and fishing resources.
7. Problem of child labour in mines and other serious human rights violations.

Key Legislative and Implementation Issues

- The balance between Centre-State relation with regard to state list subjects.
- The Resettlement and Rehabilitation (R&R) initiative requires perfect implementation to help project affected people. Also the Act entails Corporate Social Responsibility (CSR) measure to help locals and project affected people which is unsupervised and leaves the responsibility completely at the behest of profits- motivated corporates.
- Exploitation of small deposits: the provisions for allowing small deposits to be mined by local cooperatives have to be streamlined to ensure that they are not over and wrongfully exploited..

¹ Mines and Minerals (Development and Regulation) Bill, 2011 approved, September 30, 2011, <http://pib.nic.in/newsite/erelease.aspx?relid=76352>

- Prevention of illegal mining: this is critical and should be dealt with through provisions which enable special policing at all stages of processing and sale chain.
- Taxation and levies: the issues regarding fixation of royalty rates and profit sharing must be dealt with accordingly.
- Issues of multiplicity of authorities could lead to red-tape rule and lacuna in the system.
- Preferential treatment of coal: Coal has been given special provisions in the bill there by ignoring other commodities and the similar risks and hazards that are associated with them.
- District Mineral Foundation: Disbursal and expenditure of collected funds so that the maximum of it reaches to the affected communities and not get diverted due to corruption.
- Implementation issues regarding offences and penalties would require strict measures since this curtails and acts as a deterrent.
- Transitory provisions have to be regulated in greater detail.

Arguments For And Against The Proposed Bill

The Mines and Minerals (Development and Regulation) Act, 1957, which is to be replaced by the newly-tabled Bill, had laid out sufficient punishment for the offenders. Imprisonment for offences was at the best for two years or with fine not exceeding Rs 25,000 or both. In addition as Sec 12 the provision enables a State government to not only forfeit security but also to suspend, curtail or revoke the licence in case the operation are not being “conducted” as per approved plan. The Bill also seeks to empower state governments to constitute special courts for providing speedy trial of offences relating to illegal mining.

Other major issues highlighted in the bill are it gives preference to tribal cooperatives for mining small deposits. The bill also suggests consultations with gram sabha or district council before granting mineral concessions and for mine closure plans but does not give them power to veto a project. It introduces a sustainable development framework under which a reserve can be exploited scientifically, keeping environmental concerns in mind. This bill also expands the definition of project affected people. Apart from those who own the land, it includes those whose livelihoods and traditional land rights are affected.

This bill is also facing stiff resistance from corporate sector. If this becomes an Act, in current form, it would adversely impact the EPS in the range of 1.9% to 15.2% for various mining-metal companies under coverage.

According to FICCI, new provisions for paying additional Rs 10000 crore per year by the coal firms cumulatively will adversely affect their revenues. FICCI emphasized on the need for reviewing the provision of contribution of 100% royalty in case of non-coal minerals and 26% of profits in case of coal by mining companies towards District Mineral Development Fund. In addition, FICCI also suggested the need to relook at provisions related to centre-state relations, moratorium on grant of mining lease, transitory provisions, existence of multiple authorities etc which would further adversely impact the development of the mining industry.

This new taxation for the mining industry will hamper the growth and employment generation potential of the mining industry. This will seriously impact the valuation of small shareholders of mining companies.

Mining representatives also feel that the provision regarding sharing 26% profit by coal companies and 100% royalty by mineral companies with the impacted communities is too aggressive and may have

negative collisions. This payment must be made even in case of existing leases where the affected persons are not identifiable and the amount should be contributed each year to a “District Mineral Foundation”. In the draft Act companies will have to provide employment, make payments and other provisions in accordance with the R&R policy of the state.

Conclusion

The Bill aims to ensure transparency, equity, elimination of discretions, effective redressal and regulatory mechanisms along with incentives encouraging good mining practices, which will also lead to technology absorption and exploitation of deep seated minerals.

The economic development model pursued and its consequent drive to higher consumption levels is increasing the threat of mining induced impoverishment among a large section of the society. The social and political implications of mining assumes far reaching implications when the principle mineral wealth lies in the most forested regions and those homelands traditionally inhabited by Dalit and Indigenous People.

References

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(Background Note: Prepared for the National Consultation on MMDR Bill, 2011, organized by CLRA and YFPP)