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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **AN ANALYSIS OF MINING LEGISLATIONS AND REFORMS IN INDIA**

AUTHORED BY - NAVYA ARORA

## **Abstract**

The mining sector of India forms a core part of the Indian economy, mines and minerals play an essential role in the economic growth of any country. It is essential to regulate and legislate upon the same in order to avoid illegal mining, prevent misuse of the minerals and protect the environment.

India is self sufficient when it comes to certain minerals while it is dependent upon other nations for others. India mineral rich region akin to Australia and eastern Africa, however it lacks the resources to untap the natural treasures present under the earth within its boundaries. The Mines and Minerals (Development and Regulation) Amendment Bill, 2023 has been introduced to overcome these challenges. This paper analysis the positive and negative aspects of such reforms.

**Keywords** - Reconnaissance Permits, Prospecting Licenses, Mining Leases, mineral concession

## **Introduction**

The mining industry forms a quintessential part of the Indian economy as it provides basic raw materials that are essential for numerous important industries. India is a major producer of bauxite, iron, and zinc ore, standing among the top five producing countries. Furthermore, it is also the world's second-largest coal producer as of 2021. The country is rich in minerals and is often compared to developed nations such as Australia when it comes to its geological potential.

However, only 10% of the Obvious Geological Potential (OGP), has been explored and out of that less than 2% is actually mined. The country's investment in global mineral exploration remains

modest, accounting less than 1%.<sup>1</sup> Minerals play a very important role when it comes to growth of any economy. It is unfortunate that a developing country like India with regions rich in minerals unable to capitalise on such treasure.

The central and the state together regulate the mining sector in the country. Several legislations have been enacted over the years to protect the natural resources from being exploited or misused as well as to promote the exploration of new minerals and regulate the procedure for the same.

The Mines and minerals (Development and regulations) Act, 1957 (MMDR act) provides the basic framework for mining regulations in the country. The act has been amended time to time so that the mining legislations are refined and are in accordance with the ever-changing society and environment. Hence, the latest Mines and Minerals (Development and Regulation) Amendment Bill, 2023 has been introduced in order to leverage from the private sector expertise to unlock the country's untapped mineral potential.

## **Legal Framework**

India being a federal union of states, presents that the State Governments are the owner of minerals located within the such state boundaries. However, article 297 of the Indian constitution provides that resources in the continental shelf and exclusive economic zones would also be under the authority of the Union.

Even though mineral wealth vests with the State Govt, the subject of regulation of Mines and Minerals development is included in the 7th schedule of constitution of India. Therefore, as per the entry number 54 of the List 1 (union list) the parliament by law to be expedient in the public interest can regulate the mines and mineral development. While entry 23 of list II (state list) under the 7th schedule provides for Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the centre.

Hence in regards to entry 54 of List I, Parliament has passed legislation titled 'The Mines & Minerals

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<sup>1</sup> Ministry of mines, annual report 2023



(Development and Regulation) Act, 1957' as Central Act and section 15 of this act delegated the rule making powers in respect of minor minerals to the states. The MMDR Act, coupled with the rules framed under it, are the cornerstone of the legal framework when it comes to mines in India. The legislations that govern mining sector are:

- Mines Act, 1952 and Mines Rules 1955
- Mines and minerals (Development and regulations) Act, 1957
- Mineral Concession Rules, 1960
- Mineral Conservation and development rules, 1988
- Offshore Areas Mineral (Development and Regulation) Act, 2002
- Offshore areas mineral concession rules, 2006
- Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016

### **Mines Act, 1952 and Mines Rules 1955**

The mines act 1952 is a welfare legislation which provides for regulation of labour and their safety in mines. As per its preamble it is an act to amend and consolidate all the laws that related to labour and their safety in mines. Further, it legislates the provisions with regards to for healthcare and security of mineworkers and providing them safe working conditions.

While section 58 of the mines act 1952 led to the introduction of the mines rules 1955 which also provided for provisions related to basic healthcare, sanitation and welfare of mine-workers.

### **Mines and minerals (Development and regulations) Act, 1957 and The Mineral Concession Rules, 1960**

The Mines and minerals (Development and regulations) Act, 1957 (MMDR act) is a central legislation that constitutes the basic framework of mining regulations in India. The act applies to all mineral except minor minerals and atomic minerals. The act throws light on the process and conditions for acquiring a mining or prospecting licence in India.

Since the act was enacted adhering to the Industrial Policy Resolution 1957, it predominantly aimed on imparting a mineral concession regime with respect to the metal producing public sector

undertakings. Mineral concessions refer to the license for mining. The act provides for 3 types of mineral concessions:

1. Reconnaissance Permits
2. Prospecting Licenses
3. Mining Leases

The Mineral Concession Rules, 1960 were introduced with the aim to govern and regulate the grant of reconnaissance permit and prospecting permits. These rules also govern the mining lease. Section 13 of the Mines and Minerals (Development and Regulation) Act provides for the said rules.

Salient features –

- **Reconnaissance Permit**- the reconnaissance permit is granted for conducting mining operations for the initial prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, as defined under the act. Such permit for any mineral is granted for a period of 3 years and for maximum area of 5000 sq. kms. The operations carried out under this permit do not include main activities of extraction. Herein, after the period of 2 years the areas should be decreased and extraction area should be found. A holder of RP possesses a preferential right to acquire PL(s) in the area concerned.
- **Prospecting Licenses** - the grant of prospecting license is the next step after the RP, as this permit is granted to carry out activities for the purpose of exploring, locating, and establishing mineral deposits presence beyond doubt and spotting of the minerals. A PL for any mineral is granted for a maximum period of 3 years and maximum area of 25 sq. kms, the maximum area limit can be relaxed by the central govt if necessary. A PL holder possesses a preferential right when it comes to acquiring ML in the concerned area.
- **Mining Lease**- mining lease is the legal contract for undertaking operations for extracting any mineral or other valuable deposits as per the conditions as to time, price, rental, or royalties agreed to. In other words, mineral lease is granted for winning the mineral present under earth. It is granted for maximum of a 20 years period and a 30 years period, for a maximum area of 10 sq. kms, however if required central govt can relax this limit.
- **Termination of prospecting licences or mining leases** - Section 4A of MMRD act states that Central or state government can terminate prospecting licences or mining leases after

providing reasonable opportunity to the holder of such license. A license can be terminated in following cases:

- By the virtue of regulation of mines and mineral development
  - In interest of preservation of natural environment,
  - To check on floods and to prevent pollution,
  - To ward off danger to public health or communications
  - To safeguard safety of buildings, monuments or other structures
  - To conserve mineral resources
  - For ensuring safety in the mines or other such purposes
  - In case non-performance of production operations and dispatch for a 2 years period from the date of execution of the lease
- 
- **license/lease grant in case the ownership lies with a person other than the government-**  
The rights of private landowners to own subsoil and mineral wealth has been recognised by Supreme Court.<sup>2</sup> Chapter V of the Mineral Concession Rules, 1960, lays down the procedure of the grant of RP prospecting lease and ML when the ownership lies with the person and not the government. These rules put in place some qualifications regarding approval and grant of the prospecting license or mining lease such as that the entity must have filed the ITRs and got the self-assessment of income tax completed.
  - **Royalty** - Section 9 of MMRD act state that a holder of mining lease shall pay royalty in regards to any mineral removed or consumed from the leased area at the specified rate provided in second schedule. License holder shall not be liable to pay royalty in case of any coal consumed by a workman engaged in a colliery given that the consumption is not more than one-third of a tonne per month.
  - **Revision** – As per section 30 of the MMRD act either on its own or in case an aggrieved party files an application made within the prescribed time, the central government has the authority to revise any order or decision made by a state government with respect to any mineral other than a minor mineral.

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<sup>2</sup> Threesiamma Jacob and others v Geologist, Dppt of Mining and Geology and others 2013 (9) SCALE 1

- **Penalties**

Section 21(1)	<ul style="list-style-type: none"> <li>• In case of carrying out reconnaissance or prospecting or mining operations without permit or licence or lease, respectively</li> <li>• Or in case of transportation and Storage in violation of Act or the Rules</li> </ul>	<ul style="list-style-type: none"> <li>• imprisonment for a term which may extend to 2 years and with fine which may extend to 25000 rupees per hectare of the area</li> </ul>
Section 21(2)	<ul style="list-style-type: none"> <li>• Contravention of any Rules and</li> <li>• Continuation of such contravention</li> </ul>	<ul style="list-style-type: none"> <li>• imprisonment for a term which may extend to 1 years or with fine which may extend to 5000 rupees, or with both, and</li> <li>• in the case of a continuing contravention, with additional fine which may extend to 500/- rupees for every day during which such contravention continues after conviction for the first such contravention</li> </ul>

### **Mineral Conservation and development rules, 1988**

The Mineral Conservation and Development Rules, 1988 provide provisions regarding reconnaissance and prospecting operations with the objective of protecting and preserving minerals in India. According to these rules, a license for the purpose of mining is authorised in the most scientific manner, and the mining lease holder is instilled with the liability to take all reasonable precautions required to protect the environment and prevent pollution while conducting prospecting, mining, beneficiation, or metallurgical operations in the region.

## **Offshore Areas Mineral (Development and Regulation) Act, 2002 and Offshore Areas Mineral Concession Rules, 2006**

For the purpose of for regulation of mines and development of mineral resources in the offshore areas which includes territorial waters, continental shelf, the exclusive economic zone or any other maritime zone under the union of India, the Offshore Areas Mineral (Development and Regulation) Act, 2002 was enacted by the central government.

This act is applicable to all minerals found in the offshore area and also includes those minerals provided in Section 2 of the Atomic Energy Act, 1962 but rules out mineral oils which includes natural gas and petroleum and minerals related hydrocarbon resources.

Section 35 of the act provides for introduction of the Offshore Areas Mineral Concession Rules, 2006 by the Ministry of Mines. These rules lay down the procedure for granting reconnaissance permit, exploration license or production lease as per the act

## **The Mineral (Auction) Rules, 2015 & Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016**

The section 13 of the Mines and minerals (Development and regulations) Act, 1957 provides for the enactment of these rules by the central government. They aim at regulating the grant of permits, licenses and leases in respect of minerals and for related purposes. According to section 3 of these rules, they apply to all the minerals excluding those prescribed as minor minerals and those listed in Parts A and B of the First Schedule of the said Act.

## **Mines and Minerals (Development and Regulation) Amendment Bill, 2023**

The Mines and Minerals (Development and Regulation) Amendment Bill, 2023 was introduced in the Lok Sabha on July 26, 2023. The bill sought to amend the Mines and Minerals (Development and Regulation) (MMDR) Act of 1957, with the main aim of encouraging private sector participation in the exploration of essential and deep-seated minerals within the boundaries of the country.

The bill seeks to enact crucial provisions with the objective of increasing private sector engagement which differs from the existing MMDR Act of 1957. following key provisions throw light on such contrast:

- **Inclusion of sub-surface activities in reconnaissance:** After the 2015 amendments of the, reconnaissance been defined as preliminary prospecting, encompassing aerial surveys, geophysical, and geochemical surveys, and geological mapping. The new bill widens that definition and seeks to include pitting, trenching, drilling, and sub-surface excavation as a part of reconnaissance which was prohibited in the past.
- **Introduction of exploration license (EL):** Apart from the previous permits such as reconnaissance, prospecting, mining leases, and composite licenses included in the MMRD act, the new bill also aims at introducing the concept of an exploration license, allowing reconnaissance or prospecting, or both, for specified minerals.
- **Declassification of atomic minerals:** Previously, six atomic minerals - —beryl, beryllium, lithium, niobium, titanium, tantalum, and zirconium were restricted to government entities are now declassified as atomic mineral by the new bill. These minerals can now be explored and prospected by private individuals as well.
- **Auction mechanism for exploration licenses:** As per the new bill, the exploration licenses so introduced will be granted by the state government through the process of competitive bidding. The framework for such auction will be defined by the central government.
- **Exploration license validity and area:** The exploration license is granted for five years, which shall be extended by two years if necessary. The maximum area for carrying out the exploration activities extends up to 1000 sq. kms. However, at the end of the 3rd year up to 25 percent of the originally authorized area can be retained by the licensee, subject to submission of reasons.
- **Geological reports and incentives:** with regards to the mentioned exploration license, a geological report must be submitted by the licensee within three months of exploration completion or license expiration. In case proven resources are found, auction for a mining lease must be conducted by the state government within six months of the report. The licensee is entitled to a share in the auction value of the mining lease for the prospected mineral, the share will be defined by the central government.

- **Central government-led auctions for critical and strategic minerals:** The auctions for the composite licenses and mining leases of certain specified minerals which are considered critical and strategic, such as lithium, cobalt, nickel, phosphate, potash, and tin. Shall be conducted by the central government though concessions will continue to be granted by state government

### **Mining sector's existing exploration constraints**

As per the geological mapping of India, an area of 571,000 sq. km, from a total of 3.1 Mn sq. km. has been demarcated as an Obvious Geological Potential (OGP) area, as the geological potential for the occurrence of mineral deposits is more.

As per the Atomic Minerals Directorate for Exploration and Research and the Centre for Social and Economic Progress (CESP), India's geological potential is close to mineral-rich regions like Western Australia.<sup>3</sup>

Unfortunately, due to legal, administrative, technological and environmental constraints the process of exploration which is a necessity for discovering viable minerals is obstructed. As a consequence, the country has mere explored 10% of its Obvious Geological Potential (OGP) out of which only 2% forms the total extraction. India accounts for less than 1% of the global mineral exploration budget.

One factor contributing towards such unachieved potential is that the process of exploration necessitates use of techniques like aerial surveys, geological mapping, and geochemical analyses. However, such techniques are highly specialized, time-intensive, and capital intensive and with bleak probability as much as less than a 1% of the explored projects turning out as commercially viable mines. Therefore, the majority of such exploration projects have been undertaken and executed by government bodies like Geological Survey of India and Mineral Exploration Corporation Limited (MECL). The lack of private participation has led to paucity of vital mineral discoveries.

The MMDR act, 1957 has been amended from time to time to increase the involvement of the private

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<sup>3</sup> INDIA BRIEFING, [India's Mines and Minerals Bill 2023: Push for Greater Private Sector Role \(india-briefing.com\)](https://india-briefing.com/), (Last visited sept 6, 2023)

companies through procedures like First Come First Served (FCFS) and Prospecting Licenses (PLs), Mining Leases (ML) or Reconnaissance Permits (RPs). In order to ensure transparency and prevent misuse a shift towards auction-based allocation was aimed. The Evidence of Mineral Content (EMT) rule were introduced with the objective of ensuring fairness but resulted in limiting the private sector participation by only allowing auction of projects with prior government exploration. This acted as a hindrance for private firms to enter early-stage exploration.

Even after all the initiatives, which also included funding from National Mineral Exploration Trust (NMET) to the private firms registered as exploration agencies, the private participation remained scarce.

### **Positive aspects of the New Bill**

The Mines and Minerals (Development and Regulation) Amendment Bill, 2023 overcomes the above-mentioned challenges by lining up India's exploration processes with those of developed countries and following the successful models like of Australia's

- The new type of license encourages exploration by private sector
- It would aid India in accomplishing net carbon neutral by 2070 which was agreed to at COP26 Glasgow summit
- The private sector involvement would decrease the import bill of India by discovery of new minerals
- The new bill would attract FDI and junior private explorers as it creates a more conducive legal environment, which would ultimately lead to economic growth<sup>4</sup>

### **Negative aspect of the new Bill**

The new amendment bill raises a few concerns, while the entire world is moving towards the alternatives of the fossil fuels India on the other end is trying to capitalise it, also jeopardising its

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<sup>4</sup>Shivpriya Nanda, J Sagar Associates, *Mining in India: overview*, THOMSON REUTERS PRACTICAL LAW, (Sept 7, 2023, 8:11pm), [Mining in India: overview | Practical Law \(thomsonreuters.com\)](https://www.thomsonreuters.com/practical-law/articles/mining-in-india-overview)



commitment to reduce the emissions intensity of GDP made at the Paris agreement.<sup>5</sup> Apart from that the bill raises following concerns –

- revenue generation done by Private companies is dependent upon a share of the premium paid by mining entities. The process of government clearance is slow, the revenue generation only starts after successfully discovered mine is auctioned and operationalised and this could take years.
- The auction premium will be known only after a successful mine auction. This poses a lack of clarity in the revenue prospects and it might discourage private sector participation
- It is difficult and complex to auction an unexplored resource. the process becomes a lot feasible after the value of resources dealing with is known such as discovered mineral deposits.
- The explorer gets only a share of the premium at an unspecified stage as only the government can auction whatever the explorer has discovered. This discourages the private players as they cannot directly sell their discoveries to the appropriate entity.<sup>6</sup>

### **Conclusion**

only a few things in the world that do not have two faced implications, the new amendment bill is like a double-edged sword as it has its fair share of advantages and disadvantages.

The new regulations aim to set up new mines, however the process could take up years leaving any investor ambiguous whether the investment is worth the risk or not.

While steps were taken towards overcoming the existing challenges faced by the mining sector, those amendments were confronted with difficulties. Such problems must be revisited and discussed in details so that the main objective of the Bill is achieved.

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<sup>5</sup> Overview: India: minerals and mining laws and regulation, STA LAW FIRM, (Sept 7, 2023, 9:16 pm), <https://www.stalawfirm.com/en/blogs/view/india-minerals-and-mining-laws-and-regulations.html>

<sup>6</sup> . Supreme Court Opinion dated September 27, 2012 on a Reference by the President of India (Special Reference No.1 of 2012 under Article 143(1) of the Constitution of India).