



A CRITICAL EVALUATION OF THE ADEQUACY OF CURRENT MINING LAWS IN INDIA: A LEGAL STUDY

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Abstract

It is a known fact that mining laws in any country is considered as a most important aspect and is necessary for the development of the country and especially for India being a developing country. But still India is struggling with the proper implementation of law as number of cases has been seen where the mining is been exploited by the players of the mining industry. This research paper is an attempt to analyse the important legislations regarding mining laws in India and are they sufficient to fulfil the current needs of the country specifically, the Mines and Minerals (Development and Regulation) Act, 1957. In this paper, the researchers would focus upon the important mining laws which regulates the mining sector in India and focus upon the implementation of the same by the government. First of all, the important mining legislations will be discussed and analysed in the paper. Further, the paper would throw light upon the challenges which are existing in the country in regard of the mining sector and in the respect of which the Legislature should look upon the challenges and do the necessary changes which are necessary in the current times. In support of this, this research would also look upon the judgements passed by the respective Courts in the context of lack of implementation of the mining laws in India. Finally, the analysis and the way forward will be discussed in this paper.

Keywords: Environmental Protection, Government, Illegal Mining, Implementation, Judiciary, Mining Laws.

Introduction

In India, several laws have been passed in respect of regulating the mining sector, but this research would only focus upon the few important legislations and especially the Mines and Minerals (Rules and Regulations) Act, 1957 and its latest amendments. The mineral resource in any country plays a crucial role in the economic development of the country because it contributes towards the national income of the country by generating the employment, while on the other hand, it also causes the depletion of the non-renewable resources which make it an important sector to be looked upon, and in India, the mining sector is not contributing too much to the GDP as compared to its potential³. The government of India has the major control over how the mining rules will work accordingly as mineral sector is an energy sector which should be given special attention because it is being used for the uses of the public rather than being given to other people to be exploited for their selfish needs.

Further, the law regarding mining has been regulated and guided since the eighteenth century. In brief, the Mines Act became applicable in 1952. Further, the Act has been amended several times. Along with it, the States have its own act. So, this research emphasizes upon the point that it is the requirement of the hour to change, and the Legislature is required to revisit the needs of the mining sector along with focusing upon the environmental protection. In the recent times, the recent trend is towards the significance of the mining

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laws to enhance the competitiveness and boosting the mining sector in India.

India is always known for their abundance of mineral resources. So, as per the 2009 Report upon the Mineral Output by the World Mining Congress, India was ranked 4 in the terms of production volume.

Secondly, before moving towards the important legislations in respect of the mining law in India, one should know about some brief history of the mining sector in India. The mining activities are from a long time which can be clearly seen in the mining tunnels which has discovered the rich history of India's mineral production. As prior to the independence of India, the importance for the minerals for a country was not given that importance for the purpose of the nation building, but after the independence, mining law picked up the pace and various mining laws were introduced as India's first act was the Mines Act, 1952, followed by the MMDR Act, especially after the introduction of the LPG policy in the country. Since then, most of the new Indian mining laws are sufficient to address the upcoming problems in the country.

Thus, the research seeks to analyze the current enactments done regarding mining laws and tries to find out its impacts upon the mining sector along with the environmental challenges faced by it. The research also focusses on the various judgements of the Court over the environmental and illegal mining issues and emphasises upon the principles of sustainable development.

Important Legislations Regarding Mining Law

There are various number of legislations which are passed by the Indian legislatures regarding mining, but this research paper has focused upon the major laws. Firstly, one should know about the authorities which look upon the mining sector. Thus, the mining industry is being regulated in India by extensively several range of authorities like the Ministry of Mines along with its subordinates, that is, the Indian Bureau of Mines and

Geological Survey of India, and the Ministry of Environment.

Mines Act 1952

It is considered as one of the important and the primary Act which was introduced to regulate the mining sector in India as it was brought to bring down the measures relating to the health, as well as for the safety of the workers who all are working in the coal and oil mines in the country. In basic terms, it has talked about the duties of the owner about how to manage the mining operations and how to manage the procedure required to manage safety of the workers. It also gave and prescribed the number of working hours of the workers, the minimum wages rates along with the other matters. In simple words, it covered all the basic aspects of the related matters. It could be explained well by highlighting out the major headings which are as follows:

1) Committees

It empowers the Central Government to form committee and thus these committees has the power same as that of a civil court and can dispose any dispute which arise between the premises.

2) Health and Safety

It prescribed the basic facilities and rights of the workers within the mines which includes first-aid box within the mines, then the basic limitations upon the numbers of hours to be worked upon as no workers should be allowed to work more than 9 hours and not more than 48 hours in a week, etc.

3) Overtime of Wages

If workers are working more than the prescribed time, than they should be paid for overtime.

Mines and Minerals (Rules and Regulations) Act 1957⁴

It was one of the important laws which came to regulate the mining sector. The Act empowers the government to aim for the sustainable mining in India which was a great step. So, the features of this Act are as follows:

a) License

It empowered the State Government to grant and approve the licenses to carry out the mining operations

4. Mines and Minerals (Development and Regulation) Act, 1957.

within the country and it gave the powers to the various authorities such as Geographical Survey of India, the Indian Bureau of Mines, etc. to carry the related activities and conduct surveys.

b) Rules and Regulations regarding License and Lease

As this Act allows maximum area of ten kilometre for license, but it is upon the discretion of the Central Government to increase the limit than the prescribed upon the application received by the same party.

Coming over to the lease, a minimum lease is for 20 years which can be extended to 30 years depending upon the minerals being explored subject to the Central Government.

It also prescribes the penalty up to 5 lakh or 5-year imprisonment if anyone is found in contravention. When it comes to illegal mining, the fines can be extended up to 10 times of the mineral which are mined.

Environmental Protection Act, 1986

This Act is not directly related to the mining sector, but it is necessary to be discussed because the mining activities involve the environment. So, this Act was introduced to protect the environment and obviously means saving it from the damages which are caused by the mining activities.

So, this Act was enacted in the year 1986 and it empowers the Union Government to establish committees which would be responsible for preventing pollution in all ways and to also take upon specific environmental problems which are affecting in the different parts of the country.

The Environment Act of 1986 states that “environment comprises of water, air, and land and interconnection among the water, air and land with humans, living parts and microorganisms”.

So, the Indian Constitution has a fundamental provision on which all the citizens of the country have the duty to protect the environment as stated in Article 51A of the Indian Constitution.

The Indian Constitution’s provision on fundamental duties makes it very clear that all people have a duty to protect the natural environment. Article 47 of the

Indian Constitution also specifies that the importance of the State’s main priority should be to improve the public health in general and thus public health also includes that the healthy population relies upon the clean environment.

The National Minerals Policy of 1993 (NMP)

So, this policy was introduced by the Indian government as a continuation for the economic, fiscal and trade reforms which were brought in the year 1991. So, it basically means that the mining sector is in the direct need of the private investment from the other countries.

Latest Amendment of MMDR Act 2021

Mines and Minerals (Rules and Regulations) Act 2021

The MMDR Act has been amended several times and now discussing about the MMDR Act 2020, the basic purpose behind this idea was to liberalize the mining industry for the purpose of the Indian mining sector to reach its full potential which they have not reached as the mining sector did not contribute to the Indian GDP, and to lessen the imports as India has huge amount of mineral within it which also includes attracting the Foreign Direct investment (FDI).⁵ So, to reach this stand, it is obvious that the government had to remove strict restriction that was earlier imposed by the Mines and Minerals Act, 1957 and 2015. First, by the introduction of the bill, it allowed 100% FDI in the coal mining sector. Some of the key points are:

- 1) Previously, the uses of the coal were reserved for the power generation but in the new Act, the Central Government has empowered the companies for the sale.
- 2) In the previous Act, one of the important amendments to boost the mining operation within the domestic country is that previously, new licensees which is required to be acquired before the mining could be started, but now to speed up the process, the existing license is given to the effective bidder for a time of 2 years.
- 3) Previously, there was a requirement for the concerned State Government to acquire approval from the Union government to issue license, permit, and clearances, but now this requirement is being relaxed as in certain

5. Mines and Minerals (Development and Regulation) Act, 1957.

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cases where the Central Government has already made the allocation, then there is no such requirement.

So, the MMDR 2021 amendment brought various changes. But to understand the Act deeply, there are some keys that this research paper would like to discuss about is the private participation.

Private Participation

For the development to the mining sector to meet its full potential, the Foreign Direct Investment is also being increased. So, these new guidelines regarding private investment have both the positive and negative sides. As the State controlled mining sector would be transferred to the private sector for bringing the fresh capital in the market, the new law also introduced the competitive bidding in the auctions of the coal mining, and as of now the private sector is in the minority which would attract more investors. As the objective behind is to be meet the energy needs of the country and energy independence is considered as one of the most essential factors for the GDP growth, but the government has always failed to achieve this goal and to reduce the import limits.

But the challenge which is concerning for both the sector of the economy is that it is still challenging for a new player to come as that needs to look upon for the investment to get the cheaper coal, mining prices along with the government taxes, etc. As the new legislature have made less effect upon the miner expenditure, it is assumed that there is no need of significant price adjustment.

Challenges Faced to Meet Current Needs

The mining sectors of any country is considered as one of the important sections for any country and especially for a country like India which is a developing country, this sector should contribute more towards the GDP growth of the country. As of now, it is not contributing much to the GDP growth as compared to its potential as that was the reason behind the recent amendment of the MMDR Act. As already discussed

in the paper, the basic objective of the amendment was to decrease the dependence upon the imports as India has rich mineral resources in the country as it would lead towards the increase of the production within the country which is directly proportional towards the decrease in the imports.⁶ But the issue arises when such production would be increased in the country, there are various challenges which the government would face or some concerns which should be looked upon during the implementation of these rules and regulations at administrative level especially at the ground level work. So, to understand the situations easily the challenges are divided as follows:

1) Regulatory Challenges

First, the primary issue is the regulatory challenges as earlier discussed and that the direction of the recent amendments is to increase the growth of the mining sector in the country, and henceforth comes the issue that there are several regulatory and administrative challenges within the framework as it is quite complex which restricts the growth of the mining sector.⁷

To explain the situation much better, till now there are difficulties faced for the transfer of the mining leases. Still there is no clarity that they would obtain the license as the mining licences are allotted upon the first come basis, but still there is no transparency within the system. One would look upon the procedure to get the mining license by getting all the approvals because the purpose of mining is a long-complicated process in which number of companies and agencies are involved and in the addition to that there is quite a long delay in the disposal for the clearances. There was very limited opportunity for the private sector to improve the technology within the sector as it is heavily taxed industry within the country.

2) Environmental/Health issues

As this is one of the major challenges in the current times where globalization has started and obviously it had a great impact upon the economy of the country, but due to the increase in the production and technology, the negative side of the same page is the global

6. Kuntala Lahiri-Dutt, *Illegal Coal Mining in Eastern India: Rethinking Legitimacy and Limits of Justice*, 42 ECONOMIC AND POLITICAL WEEKLY, 59 (2007).

7. Rules and Measures in Place to Curb Illegal Mining in States, *Press Information Bureau* <https://pib.gov.in/PressReleasePage.aspx?PRID=1807684> (last visited on Nov. 11, 2022).

warming and now due to the new amendments which is focusing upon the expansion of the mining sector, the same issue would be a major challenge for the government for the upcoming years. There are various instances which can be seen in the Makrana Marble mines in Rajasthan, or in the granite mines of Karnataka which has caused a significant adverse effect upon the environment⁸.

Further, the oil and coal mines play an important role in the economy as they are considered as the desirable committees which every country wants to utilize and capitalize upon it. So, all over the world due to the rising environmental concerns, the governments of different countries are trying to come together to take steps and measures⁹ to utilize the more sustainable method of creating energy as discussed in conference regarding climate change which was held in Paris. Over more than 200 countries agreed to lower the carbon emissions in the coming year and to slowly eliminate all the practices which were leading towards the global warming and for the countries like India and China who are the biggest consumers of coal as recommended by the Paris agreement, are required to focus upon the measures which would help them to facilitate to reduce the level of emissions in such a manner which would align with the objectives of the economic development of the concerned countries¹⁰.

Thus, in the response to this Paris agreement, the new amendment which is looking towards the growth of the mining sector within the country has raised a handful number of concerns over the environmental protection as keeping in mind that the whole world is looking to shift towards a substitute which is more cleaner than coal as an alternate remedy towards the fossil fuel for the sustainable development, but India's object is to capitalize upon the growth in the mines sector to meet

its potential which is directly proportional to its commitments made in the Paris agreement.

Administrative issues

The administration of any country is an important pillar of the government as without proper administration, a process cannot be brought, but here the challenge is that the arbitrary allocations of the coal mines to whom the licences would be given is a long-drawn process, and at later stage due to corruption also leads to the blockage of the license. So there should be better framework for these type of things because it is the first step when the mines can be started and most of the issues is in the allocation of the mines, so the process should be made simplified with a transparent and better supervisory framework. After this comes the delay in the getting the environmental clearances¹¹ as this is one of the major concern due to the bureaucratic hindrances.

Judicial Pronouncements Regarding Better Implementation of Mining Laws in India

Over the decades, mining sector of India has been in a number of controversies, may be it a violation or poor implementation of the policies made by the government which led to lack of regulatory requirement in respect of environmental protection and upon the community rights along with the over-extractions of the minerals, or the illegal sale of ores which has necessarily caused the intervention of the Judiciary in such types of matters.

This research discusses the recent landmark cases upon this issue to know about the approach of the judicial court in the interpretation of the mining laws which are been divided in the administrative and the environmen-

8. *Supra note. 6*

9. Raza A and Dwivedi M, Regulatory Framework of Minerals and Mining Industry in India in Relation to Environmental Concerns: A Critical Analysis, SSRN (accessed on Nov 15, 2022) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3415706.

10. *Id.*

11. *Id.*

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tal issue to understand the situation of the mining sector in a much better way.

1) Administrative issues

*Goa Foundation Vs. Union of India (UOI) and Others*¹²

In this case the issue was regarding the mining irregularities in Goa such as exploitation of loopholes of the MMDR Act¹³ and lack of government official on the inspection. There were several factors that contributed to the large-scale irregularities of mining in the state of Goa, such as to the lack of official oversight by the authorities and to that of using the loopholes to personal benefit which resulted in exploitation of the rules and regulations.

The Court in its observation has found many irregularities, the resumption of mining activities was conditionally allowed in the State. One of the main reasons for such a decision by the Court is that livelihood of the locals were completely dependent on the activities of mining, so the complete ban would affect the local communities adversely.

Further, the Court keeping in mind the best interest of the State had in its decisions tried to balance out the consideration of the environment and ecological security, which in this case has been underscored through the principle of sustainable development.

*Goa Foundation Versus M/s Sesa Sterlite Ltd. & Ors*¹⁴

This case is considered as one of the most important cases in which the mining irregularities were seen. The Court with its thorough deliberation noted that mining was to be allowed until the fulfilment of certain criteria or conditions for leases and those leases were being given illegally at that point of time. It was seen in this case that the lease which were in operation were being operated under the presumption of 'deemed extension' which was being operated like this from 2007-12 and considering such extension as second renewal, in which

there were no such renewal, and these permits were obtained through illegal means.

The Court going through the case considered such activity of renewing the leases unlawful and hence directed that the mine leases which were renewed by the State Government will become unlawful and cease to exist after 15 March of 2018, until the government acts by granting them fresh leases and also the clearance from the ECs through the process of proper evaluation that was set up by the Court. The Court criticized the State's action strictly and the court also noted that "the State within its power is unable to stop the process of mining perhaps due to the fact that the mining industry is providing revenue for the State Government, but without understanding the appreciation of the long-term impact that the mining industry will do to the State".

*Samaj Parivartana Samudaya and Ors. Vs. State of Karnataka and Ors.*¹⁵

This case was famous for the poor governance of the mining activities in Karnataka as well as huge scale of iron ore mining done by the several mining companies which caused a huge loss of the environmental and social factors. One of the observations made by the Court in the context of environmental protection was that without the clearance from the environmental department, the licenses were given and mentioned that environment and ecology are nation assets and the time has come where the mining should be stopped in the above area on the principle of the sustainable development. Later the ban of iron ore mining and mining in the the State of Karnataka was lifted by the Supreme Court in the month of April 2013.

2) Environmental Issues

*M.C. Mehta vs Union of India*¹⁶

The issue raised in this case was regarding mining activity done in between the Delhi-Haryana border around the Aravalli hills. So, the issue here is whether the mining area on the side of the Aravalli hills causing the environmental degradation, and the second issue is

12. Goa Foundation Vs. Union of India (UOI) and Ors., Writ Petition (Civil) No. 435 OF 2012..

13. Mines and Minerals Development and Regulation Act, 1957 Arrangement, <https://www.mines.gov.in/writereaddata/UploadFile/MMDR%20Act,1957.pdf>. (last visited November 30, 2022).

14. Goa Foundation Vs. M/s Sesa Sterlite Ltd. & Ors, (Civil) No. 32138 OF 2015.

15. Samaj Parivartana Samudaya and Ors. Vs. State of Karnataka and Ors., Writ Petition (Civil) No. 562 of 2009.

16. M. C. Mehta v. Union of India AIR 1988 SC 1037; (1987) 4 SCC 463.

regarding whether the mining activity deserves to be absolutely banned or should be allowed on the stringent conditions. Here, the Supreme Court held that the mining activities are harmful in nature and pointed out the case of T.N. Godavarman Thirumulpad case which stated there should be an appropriate balance between the development of the mining sector and environment protection and relied on the principle 15 of the Rio Summit which states that the precautionary measures should be taken upon the environmental protection. The Court also held that mining operation shall not be proceeded unless environmental protection is being given to those licenses.

Manohar Lal Sharma v. The Principal Secretary & Ors.¹⁷

It was held that there should be cancellation of the license on the ground that it is violating the mining rules which were followed by the Union Government of the Mines and Minerals Act, 1957 due to non-transparency been showed in the process.

Analysis

Most of the amendments done is in the right way to meet the current needs, that is right now the government is focusing upon increasing the production of mines which is a great step as it would help India to meet its demand which would eventually help India to decrease its dependence upon the imports, as it is considered as the major stance of the Government that they need to push the growth of the mining sector in the Indian economy. But here the issue with this stance of the government is that no doubt it will have major positive impact upon the mining sector, but the problem is that it can lead to the over-exploitation of the mines by the private members in the mining sector as they should lean towards the sustainable environment. But the current laws have not touched upon the area of the sustainable development in the respect of the mining sector as compared to the other companies which is giving an immense focus upon the environmental issues and towards having a sustainable development.

As the government is bound by the Environmental Protection Act 1986, which is been derived from Articles in the Indian Constitution which comes under the part of the Directive Principles of State Policy in which it

becomes the responsibility of the State to look over the environment. Along with it, the National Mineral Policy also talks about the sustainable method which should be the priority while developing in the mining sector. But still they are left behind in the execution of these rules in the mining sector because still there are various government reports which have recorded lapse in the compliance done by the mining companies. So, strict implementation is necessary for more optimum growth and efficiency in the mining sector.

The interpretation done by the Court are in the right way to regulate the mining law in India, as the research has gone through several judgements passed by the respective Supreme Court and High Courts where the Court had made observation regarding the preserving of the environment and has condemned the government regarding the non-compliance of the rules and regulations which are required to get the environment clearances.

Along with it, the National Mineral Policy was also the result of the direction in one of the landmark Supreme Court decisions, and thus it was the reason behind the establishment of this Act. Thus, it can be clearly seen that the Court are in the right direction as various judgements has been passed where the environment is being kept as the priority. So, it can be said that the Court are in the right direction of interpreting the laws of mining.

A Way Forward

Some of the important suggestions in this regard are as follows:

1) There should be a comprehensive overview of policies and practices by the Legislature in order to manage the mining sector towards a goal of sustainable development through the process of incorporating a certain type of social, and a certain type of sustainability for the environment, and the acknowledgement in the set of rules and legal type of frameworks through a proper set of bills and amendments, adopting stringent regulatory forms and also make a form of participating tool for everyone in order to protect the people and environment, and also by enhancing the benefits such as financial benefits from the mining sector and lastly by promoting more opportunities for employment.

17. Manohar Lal Sharma v. The Principal Secretary & Ors., Writ Petition (Civil) No. 120 of 2012.

2) The use of electric and hybrid vehicles can be used for transport and help in the process of sustainable development. Adopting the usage of full-electric or hybrid vehicles which helps emit less toxic gases would help significantly reduce the carbon footprint and the emission and also the total overall consumption of the fossil fuels as a whole and help in maintaining the sustainable development program.

3) The rehabilitation of sites should be done after the mining work is done. For example, biosolids can help replenish the depleted topsoil which was done from mining. Soil, which is enriched with biosolids, if seeded properly and taken care with a certain way, and watered regularly can result to the place being capable of yielding vegetation and also thus prevent further erosion in soil.

4) It can be also seen that, in almost every matter of the cases relating to mining law, the Supreme Court of India has expansively invoked the power of Article 21 of the Indian Constitution. The Courts in its decision has always interpreted the term 'Environment' as "one of the most important facets that are with connection to the right to life guaranteed under the ambit of Article 21 of the Constitution".

Therefore as environmental protection is clearly noted by the Courts in India that the importance of Article 21 and the separate legislation that is the Environmental Protection Act, 1986 which helps in preventing the extreme over usage of the environment and to counter the side effects of mining on the environment as a whole and which helps to promote the idea of sustainable development in order for the sustainment of environment and therefore it is also important for the courts to step in whenever they feel or require if they feel that the activity is injurious or harmful in order for the protection of the environment.

5) The MMDR Act should be revisited again as the issue of illegal mining continues to haunt the mining sector and constantly is damaging the economy of India as a whole. Thus, section 21 of the MMDR Act needs to be amended to a most stringent way possible as there is no way for the perpetrators to easily take advantage of the loopholes that easily and also the punishment for such crimes should be made more strict and severe.

6) While the interventions that are made by the Courts in the above-mentioned cases in this research have certainly led to some of the positive changes in the area of

mining sector from the perspective of governance, it is also important to understand that the Courts cannot be an only agent to fix the problems that arises out of the mining sector, for the regulatory compliance which is to be done by officials and the proper implementation of the provisions which is made for regulations should be done on the ground level basis. That is from the contractor to the officials, they have to be trained properly so that there is no issue regarding the regulatory practices.

Conclusion

Lastly, it can be concluded by saying that the government should be looking into various factors in the sector of mining. Though there are many problems that exists for the government to tackle the issue regarding illegal mining, it is needed to be handled in an emergency basis, and moreover the mining activities should not be conducted in ecologically sensitive and fragile areas. There should be a mapping of such area of ecological importance and the activities of mining should be banned from such areas. The rehabilitation of the areas of old mines should be put on use by the government. The mining activities should have a standard of maintaining the pollution level and in its best interest try to keep the level of pollution at the minimum level.

Thus, it can be stated that the mining sector needs accountability from both the side of the legislature as well as to that of the side of the bureaucracy to look after the mining industry, and also initiatives from the companies who are in the mining sector to look after the sustainable development.

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