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Only about 13% of the country's 575,000 square kilometers of land with geological potential has been explored in detail. The country could be sitting on a gold mine, and not even know it . FIMI



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POLICY VISION VIS-A-VIS LEGISLATION

By : MANTU BISWAS

Abstract :

To remain alive one needs food which is sourced from agriculture. But to protect oneself from cold, heat or harsh weather one needs shelter which is primarily sourced from mining. There had been green revolution in the world and also in India. But we have not seen mining revolution; rather we saw mostly negatives of mining in this country. Only in recent past after 2012 or so we are in a position to see some positivity in mining. Unfortunately the glow of light is somewhat getting dull over time. Though this country is endowed with abundant natural resources having no dearth of qualified man power the mining possibly could achieve much more what we see today, cause of which can be attributed mainly to inconsistency amongst the macro and micro level objectives of various policies and scheme of the law. This paper is to highlight some of these issues to drive ourselves to focus on these.

Write up:

Agriculture and mining are the two primitive professions being carried since ever by the human civilisation. The reason being agriculture for food and mining for making shelter out of brick, mortar and now by cement, steel etc. Progress in civilisation and development in these two professions have always been in tandem, as, to survive one needs food, i.e., from agriculture and to protect the self one needs shelter, i.e., iron, cement from mining. Very ancient old workings and smelting of iron, base metals are proof that mining has ever since being carried out in this country.

To regulate the mining activities legislations were brought into the system from nineteenth century. In the year 1901, first Mine Act was enacted in India accompanied with establishment of "Bureau of Mines Inspection" in Kolkata. Thereafter legislative framework in mining evolved multidimensional and presently the mining activity is controlled and regulated by at least 30 different acts and rules. Offence under any of these law is adjudicated in the court of law. Mining is thus highly regulated; possibly because of various scams unfolded in last decade and many other reasons elsewhere in existence in the world.

In the scheme of law the MMDR Act and Mines Act are the main legislations under which various rules are framed. MMDR Act deals mainly with grant of mineral concessions and conservation of mineral resources; while the Mines Act deals with safety of human resources while carrying out mining operations. These acts and the subsidiary rules have undergone amendments regularly to suit the social and business requirements of the day.

After enactment of MMDR Act, 1957, the major amendment was done in 1986 to give effect to the concept of mining plan. The second major amendment is in recent past in 2015 to give effect for grant of mineral concessions through auction. The reasons behind these two major amendments are (1) damage to the natural environment due to widespread mining of limestone in the Doon Valley during 1955 to 1965 and (2) various court orders in the Coal Block allocation and various mining scams.

Post 2015, in the auction regime mining blocks are allotted through auction in accordance with an elaborate scheme of rules and guidelines and formalities. After becoming successful in bidding one has to pass through various stages to secure several clearances and permission before commencement of mining in the area.

The scheme for granting mining lease through auction brought a new light in respect of growth in mining industry and transparency in the process of granting mineral concessions. The era is definitely welcome primarily because of two reasons, one the earlier regime of discretionary power to grant concessions never resulted in acquiring lease by skilled and enterprising entity, second there used to be enormous delay in disposal of concessions applications. The scheme of law under section 11 of the MMDR Act, 1957 and implied discretionary power with the lease granting authority, and the process of exercising such authority had caused endless delay in disposal of concession applications. Though the auction regime has brought interest in the mining industry, the same is not true in respect of pre-mining concessions, i.e., reconnaissance and prospecting which are the core strength of the mining sector. Though the National Mineral Policy (NMP) speaks about state of the art of technology in exploration, it is still to be realised on the ground. Another scheme of the auction regime legislation is for disposal of the long list of

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long pending mineral concessions applications filed under the pre-auction rules. Throughout the country there are hundreds of such long pending applications those are to be dealt and disposed under the amended scheme of law. In each of such cases the applicant had already invested for reconnaissance and prospecting of the area. But their fate is still hanging in uncertainty which sets exemplary concern in attracting large investment in exploration and reconnaissance. Without certainty about future prospect of owning the area, no wise person would be mindful in investing huge money in exploration activities which itself is a very costly affair with success rate of 5 to 10%.

Another negative side of the auction regime is for its absence of appropriate scheme of law for grant of concessions in respect of the small, low value, isolated; but important mineral deposits in the country. For example the country is endowed with huge resources of magnetite. Before it is used for steel making it needs to undergo processing with huge cost, which is making it prohibitive for mining, resulting into non exploitation of natural resources. Over and above, the royalty structure similar to that of hematite iron ore is negative economic factor, resulting magnetite ore to compete with hematite which is practically not possible unless the magnetite is high grade. Unfortunately we have not given serious thought in the direction of promoting mining of low grade and small mineral deposits, setting up mineral processing industry for value addition to low grade minerals which could generate employment on large scale in addition to optimum utilisation of natural resources. These deposits by its nature can not be competitively mined with the large and huge deposits thereby require a different perspective. Moreover these are the deposits and mines which generate maximum employment on per ton output basis. On the contrary the larger deposits deploy heavy mechanisation, employ and generate lowest employment in terms of per ton output. Being poor and huge populous country we need to look from socio economic development perspective.

The high level committee (HLC) headed by Sri Anwarul Huda also vouched for co-existence of small and large scale as well as merchant and captive mining in the interest of socio-economic standpoint. Possibly we have gone astray from these golden path ushered by various expert committees. Even we have not recognised the essence and principles of development and conservation of minerals, that starts from the stage of reconnaissance of prospective mineral bearing area. These also have been the main drives for review of the NMP at different times over decades. Undoubtedly the essence and principles of mineral development has never been touched upon with seriousness. Many times fine tuning between the policy and legislation found missing resulting into crisis on the legislation front. Objective of the policy vis-a-vis the procedures of the law need to be more congruous and in sync for achieving the policy objectives. Policies are made and policies are reviewed and amended along with the change in objective and

goal post; instead of consistency with long term objective. A comparison of the NMP formulated at different times would bring it much clear.

Para / ch.	NMP-1993	NMP-2008	NMP-2019
1	Preamble	Preamble	Vision
2	Regulation of Mines & Minerals	Basic Objectives	Regulation of Minerals
3	Objectives	Regulation of Minerals	Role of State in Mineral development
4	Mineral development by State	Role of the State in Mineral development	Prospecting & Exploration
5	Survey & Exploration	Survey & Exploration	Database of mineral resources and tenements
6	National Inventory of Mineral Resources	Database of mineral resources and tenements	Mining and Mineral development
7	Strategy of mineral development	Strategy of mineral development	Foreign Trade and Foreign Investment
8	Foreign Trade	Foreign Trade	Fiscal aspects
9	Fiscal aspects	Fiscal aspects	R & D
10	R & D	R & D	Intergenerational Equity
11	Conclusion	Conclusion	Inter-ministerial Mechanism for Sustainable Development
12			Outcomes and Conclusion

NMP 1993 and 2008 at chapter/para 4 and 7 talked about mineral development. The same are now at para 3, 4 and 6 of the NMP 2019. In real sense whether did we do anything seriously about the mineral development and conservation of scarce mineral resources. Else the present situation of mining with scattered huge dumps of low grade minerals surrounding the mining pits would not be seen! Even many of these so called waste dumps are believed to be of high grade iron ore. Proper assessment has not been thought of, primarily because of plenty available resources beneath the earth crust, ready to dug. Environment concern agencies therefore always shout that the earth be dug only when the resources are not available elsewhere.

Several hundred million tonnes of such low grade iron ore,

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chromite ore are dumped since ever causing serious issue of its management from its safety and environmental angle. These dumps are more than 50 years old and in olden days from technology point of view only high grade ores (presently super high grade) were useful. The remaining thrown as waste and lying at the bottom of the present day huge waste dumps surrounding almost all the mines' pits. Proper accounting with physico-chemical characterisation is never thought of including its quantification. Accounting and utilisation of these low grade ore need to be encouraged through fiscal incentives by appropriate royalty structure and also for setting up industry for processing. Such incentive would fulfil major and vital worries of the day, first, ameliorate environmental conditions which is prime concern in the present day, secondly, it would ensure maximum utilisation of minerals ensuring its conservation and thirdly it would generate huge employment. Further to vouch for value addition to the low grade mineral we all know that the country is endowed with iron ore of different grades in different geographical locations. Eastern sector is predominantly high grade, western sector is of low grade, south of medium grade etc. As a result steel plants in different sectors enjoy different grades of raw material opportunity. In southern sectors the plants starve whereas the eastern sector is affluent with high grade iron ore; leaving the low grade ore to waste. A sincere and comprehensive thought is required at macro level to eliminate such differences. This can only be through utilisation of ever thrown so called low grade iron ore of the eastern sector and taking it to southern and western sectors to feed

those starved plants. This would happen in reality only if the economics permit. One of the biggest hurdles in promoting utilisation of low grade minerals is its economics.

The royalty and tax structures are same irrespective of grade of mineral. Burden of cost towards royalty and taxes are prohibitive for utilisation of such huge resources of low grade minerals. Here is the role of the government to rationalise the royalty for low grade iron ore and incentivise setting up mineral beneficiation plant. These need comprehensive understanding with long term vision both at macro level of government and micro levels at various responsible implementing agencies.

In these perspectives, the HLC had recommended that the royalty structure should be framed in such a way as to encourage utilisation of low grade minerals as practised elsewhere in the world specifically in Australia and Africa. In case of Australia where the low grade mineral which would otherwise left forever, is value added through processing, the effective royalty is to the extent of 3 to 5% of its price. The principle is that the cost incurred in processing the low grade mineral to increase its market value is subtracted from the market price for royalty calculation to bring it at par with the unprocessed mineral sold at mine head. But we have not adopted their principle of taxing mineral of low grade; instead we made same law applicable irrespective of its grade. The essence and principle of the policy is to frame the law so as to facilitate promotion of the industry which we have been talking since 1993; but possibly failed to visualize the thought of the policy makers.

FIRST-STEP ANALYSIS : MINING IN INDIA

TRILEGAL - KARTHY NAIR and NEERAJ MENON

Mining Industry

Standing

What is the nature and importance of the mining industry in your country?

Mining is an important economic activity in India. India is one of the largest exporters of iron ore, chromite, bauxite, mica and manganese, and it is ranked fifth among the mineral-producing countries in terms of volume of production.

While there has been private sector participation in mining, the government, through its various public-sector companies, continues to be the largest participant in the domestic mining industry.

Much of India's potential mineral resources are yet to be fully explored. Historically, government policies and legislation largely focused on regulation of mines and minerals rather than on exploration and development. Taking

cognisance of the stagnation of the mineral industry, various reforms have been initiated by the Indian government allowing for greater private sector participation in mineral exploration, mine development and maintenance. However, there is much that still needs to be done. A recent study by the Confederation of Indian Industry stressed that to fuel India's economic growth, policymakers need to focus more on the mining sector with concerted efforts to regain its 3 per cent share in GDP by 2024–2025.

Target minerals

What are the target minerals?

India produces nearly 95 minerals, which include fuel, atomic, metallic and non-metallic minerals. India is a leading producer of several metallic minerals such as chromite, iron ore, zinc, bauxite, manganese, aluminium and copper.

India has set a goal to switch completely to electric vehicles by 2030. However, to achieve this goal, it needs to invest in the domestic manufacture of lithium-ion batteries (which is currently an electric vehicle's most expensive component). The NITI Aayog (an Indian government think tank) has observed that India does not have adequate reserves of some of the most important lithium-ion components including lithium, cobalt and nickel. India will need to forge international partnerships and joint ventures to secure access to key minerals to build up its domestic battery manufacturing industry.

Regions

Which regions are most active?

India's mining wealth is concentrated in Odisha, Andhra Pradesh, Rajasthan,

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Chhattisgarh, Jharkhand, Madhya Pradesh and Karnataka. Iron ore reserves are predominantly found in Odisha, Jharkhand, Chhattisgarh, Maharashtra, Goa and Karnataka. Maharashtra, Madhya Pradesh, Odisha, Andhra Pradesh and Karnataka are major areas for manganese reserves. Copper reserves are available in Rajasthan, Madhya Pradesh and Jharkhand. Zinc reserves are predominantly found in Rajasthan, Andhra Pradesh, Madhya Pradesh, Bihar and Maharashtra. Chromite ore reserves are available in Odisha, Manipur, Nagaland, Karnataka, Jharkhand, Maharashtra, Tamil Nadu and Andhra Pradesh.

Legal and regulatory structure

Basis of legal system

Is the legal system civil or common law-based?

The Indian legal system is common law-based.

Regulation

How is the mining industry regulated?

Regulatory framework

The mining industry is regulated both at the central and state level. Under the Indian Constitution, the states have the power to regulate mines and mineral development. However, this power is subject to the central laws and regulations on mining.

Mineral classification

Minerals are classified into two types – major and minor. State governments have the power to frame policy and regulate the exploration, extraction and processing of all minor minerals such as building stones, clay and sand. All minerals (other than the minor minerals) are automatically classified as major minerals. The central government has the power of revision, fixing of royalty, issuing regulations, etc, in respect of major minerals. As metallic minerals are largely classified as major minerals, we have focused on central legislation and major minerals in this chapter.

The central government also has ownership over all offshore minerals (ie, minerals extracted from the sea or ocean floor in the Indian maritime zones such as the territorial waters, continental shelf and exclusive economic zones). The central government has the right to allot concessions and collect royalties for mining offshore minerals.

What are the principal laws that regulate the mining industry? What are the principal regulatory bodies that administer those laws? Were there any major amendments in the past year?

The Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) is the central legislation that regulates the mining sector and ensures that the states exercise their power within a uniform national framework. The Mines Act 1952 sets out the regulations for health and safety in mines and conduct of mining operations. The development and regulation of offshore mineral resources is regulated by the Offshore Areas Mineral (Development & Regulation) Act 2002.

Mining regulatory bodies

The Ministry of Mines is responsible for legislation, policy formulation and administration of mines and minerals in the country. It is principally composed of:

- the Geological Survey of India, which carries out regional exploration and mapping of mining resources;
- the Indian Bureau of Mines, which maintains the National Mineral Inventory, and is the national regulator for state governments, approving mining plans, closure operations and the conservation of mineral materials;
- the Controller of Mining Leases, which governs modification of mining leases granted before 1972;
- the Directorate General of Mines Safety is the principle health and safety regulator for this sector.

In 2015, the Indian government significantly amended the mining laws, through the Mines and Mineral (Development and Regulation) Amendment Act 2015 (the 2015 MMDR Amendment Act), to bring in greater accountability and transparency to the concessionary regime. Some of the key features of the 2015 MMDR Amendment Act are:

- the mining concessions are to be granted only through competitive bidding by auction;
- mining concessions are valid for 50 years. The concession is transferable, but it cannot be renewed after the expiry of the concession period;
- reconnaissance permits for exploration will be granted on a non-exclusive basis to encourage private parties to undertake -

exploration;

- in connection to notified minerals (ie, bauxite, iron ore, limestone and manganese ore), the state government may reserve a mine for a particular end use. In such cases, it must prescribe the end use before auction of the mining lease. The minerals extracted from a reserved mine can only be utilised for the specified end use and cannot be sold or transferred. This end use restriction was relaxed in 2017;
- district mineral foundations are to be established for the utilisation of the proceeds from mining operations to develop the local area around the mines; and
- a National Mineral Exploration Trust is to be set up to facilitate detailed mineral exploration in the country.

The recently enacted Mineral Laws (Amendment) Act 2020 has introduced key amendments to the MMDRA. It provides that upon expiry of the existing mining leases (which were issued before the 2015 MMDR Amendment Act), environment and forest clearances, along with other statutory approvals and clearances, will automatically get transferred to the new lessees of mineral blocks for a period of two years from the date the new mining lease is granted under a competitive auction regime. This will allow new lessees to continue with seamless mining operations during the transition period, and in this period they are required to apply and obtain all necessary rights, approvals, clearances and licences. Further, the amendment provides that the auction of mines can now be started before the expiry of the existing lease period (with the new lease agreement being executed immediately after the expiry of the existing lease). It will enable the state government to take advance action for the auction of mineral blocks so that the new leaseholder can be decided before the existing lease expires allowing for the seamless production of minerals.

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 (the Concession Rules) have also been amended to include conditions for the issuance of vesting orders and for obtaining rights, approvals, clearances and licences to these new lessees in keeping with the amendments to the MMDRA. The amended Concession Rules provide that the state governments must endeavour to complete the auction process at least six months before the impending expiry

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of a mining lease so that there is a smooth transition from one lessee to the other. Additionally, the Mineral (Auction) Rules 2015 were amended in 2020 to reflect the changes in the MMDRA and Concession Rules and to introduce strict timelines for the execution of new mining leases following an auction of new leases and the expiry of existing leases.

Classification system

What classification system does the mining industry use for reporting mineral resources and mineral reserves?

The National Mineral Inventory, under the Indian Bureau of Mines has been following the UN Framework Classification for Fossil Energy and Mineral Resources (UNFC) since 2000. It is a globally recognised system that provides a method of standardisation for regulatory and statistical purposes.

The other international system for classification, the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) (which includes the Canadian Institute of Mining Standards, the Australian Joint Ore Reserves Committee (JORC) Code and the South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (SAMREC) Code), is geared more for public reporting by companies to provide information to investors. UNFC classification, on the other hand, is more beneficial for government reporting of mineral resource estimates and forecasts to attract investment and exploration activities. While Indian companies are required to report to the government in the UNFC format, there is no specific system that they need to follow for their quarter or annual reports, memoranda or press releases.

Key definitions and terminology used for reporting mineral resources under these two classification systems have been aligned. However, unlike the CRIRSCO system, where there must be reasonable prospects for eventual economic extraction of mineral resources, the UNFC classification reports on undiscovered or uneconomic minerals reserves as well.

Mining rights and title

State control over mining rights

To what extent does the state control mining rights in your jurisdiction? Can those rights be granted to private parties and to what extent will they have title to minerals in the ground? Are there large areas where the

mining rights are held privately or which belong to the owner of the surface rights? Is there a separate legal regime or process for third parties to obtain mining rights in those areas?

The central government regulates mining and mineral development and the state government grants concessions, collects royalty and other fees when the mineral is located in land vested in the state. While earlier concessionary rights were granted on a first come first serve basis, under the Mines and Mineral (Development and Regulation) Amendment Act 2015 (the 2015 MMDR Amendment Act), concessions to all major minerals are granted through an auction. A private party who has a mining lease for particular minerals has full title, albeit with permitted end use stipulations as may be applicable over these minerals.

There are large areas where mining rights are held by private parties and in 2015 it was estimated that there were nearly 10,621 private mines. In 2013, the Supreme Court conferred rights to mineral wealth on owners of surface rights rather than vesting them in the state. However, the Supreme Court is yet to rule on certain aspects of ownership of minerals such as the liability of private owners to pay royalties to the state.

As part of the reforms, under the new regime, a landowner who wants to grant a prospecting licence or mining lease to a third party can do so only with state government authorisation. In cases of such private mining leases, the mining lessee must comply with the central government mining regulations as well as provide the state government with a security deposit for ensuring compliance with the mine closure regulations.

Publicly available information and data

What information and data are publicly available to private parties that wish to engage in exploration and other mining activities? Is there an agency which collects mineral assessment reports from private parties? Must private parties file mineral assessment reports? Does the agency or the government conduct geoscience surveys, which become part of the database? Is the database available online?

The National Mineral Inventory of the Indian Bureau of Mines provides a comprehensive overview of exploration, development and mining activities carried out in India by central and state governments, public sector utilities and private agencies. The inventory provides mineral-wise and state-wise information with

regard to location, infrastructure, geology, exploration, physical and chemical properties, freehold or lease hold status, etc.

The Geological Survey of India (GSI) carries out geological mapping and acquires geoscience data for the entire country. It generates and disseminates this information to other exploration agencies for accelerating the mineral exploration process.

Under the National Mineral Exploration Policy 2016, the GSI is required to provide all pre-competitive baseline geoscience data free of cost to parties. Other than the GSI, the Directorates of Geology and Mines of certain state governments, the Mineral Exploration Corporation Limited and other government-owned companies also carry out detailed exploration of mining areas and maintain information databases.

The National Mineral Exploration Trust has also been newly created to carry out regional and detailed exploration for minerals. In addition, the Indian Bureau of Mines provides information on the number of mines in operation and their mineral quality either at a cost, or on a restricted access basis at its offices.

As regards reporting, a mineral concession holder is required to provide geophysical data relating to prospecting, mining and engineering to the GSI and the state government. All mines are also required to mandatory file returns with Indian Bureau of Mines. With a view to encouraging private players in exploration, non-exclusive reconnaissance permits (NREP) are also issued to applicants for preliminary prospecting of minerals in various parts of the country. There are also plans to incentivise NREP holders by giving them a right to a share in the future revenues from the mineral block that they discover.

Acquisition of rights by private parties

What mining rights may private parties acquire? How are these acquired? What obligations does the rights holder have? If exploration or reconnaissance licences are granted, does such tenure give the holder an automatic or preferential right to acquire a mining licence? What are the requirements to convert to a mining licence?

A private party can obtain an NREP, a mining lease or a composite licence (prospecting licence-cum-mining lease).

Prior to the 2015 MMDR Amendment Act, a prospecting licence separate from the mining lease could also be granted, but this has now been subsumed under the composite licence.

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Currently, mining leases and composite licences are only granted through a competitive bidding process. A composite licence holder has the right to move from prospecting to mining; however, an NREP holder is not entitled to a preferential claim for grant of a composite licence or mining lease. For those rights holders who had been granted reconnaissance or prospecting licences under the old regime prior to the 2015 MMDR Amendment Act, a right to obtain prospecting cum mining lease or mining lease, as the case may be, continues to exist.

Obligations of the rights holder include:

- obtaining all necessary permits and consents;
- operating the mine in accordance with the mining plan;
- commencing mining operations within two years of execution of mining lease;
- payment of royalty, dead rent, surface rate or other fees;
- keeping accurate accounts of minerals mined, waste material excavated, employees and all mining plans;
- allowing inspections by the authority;
- restoring the land, to the extent possible, affected by prospecting or mining activity; and
- payment of compensation for all damages, injury or disturbances caused in exercise of its rights.

Renewal and transfer of mineral licences

What is the regime for the renewal and transfer of mineral licences?

The state government may renew a reconnaissance or prospecting licence subject to a maximum of five years. A mining lease is granted for a period of 50 years and cannot be renewed.

Other than for captive use, non-auctioned mining leases cannot be transferred by the lease holder. Captive-use mining leases not awarded though an auction can be transferred by paying an upfront fee (equal to 0.5 per cent of the value of the estimated resources) to the state government.

A mining lease or composite lease obtained through auction can be transferred to a third party. Such a transferee would be subject to all conditions and liabilities that the trans-

feror was subject to at the time of the transfer.

Duration of mining rights

What is the typical duration of mining rights?

In 2015, the term for mining leases was increased to 50 years, at the end of which, the lease cannot be renewed and is re-auctioned. A reconnaissance permit or prospecting licence may be granted for three years and may be extended subject to a maximum period of five years.

The state or central government may terminate a lease or licence before its term on the following grounds:

- regulation of mines and mineral development;
- preservation of natural environment;
- control of floods;
- prevention of pollution;
- to avoid danger to public health or communications;
- to ensure safety of buildings, monuments or other structures;
- for conservation of mineral resources;
- for maintaining safety in the mines.

No such order for premature termination can be made without giving the licence or lease holder a reasonable opportunity of being heard.

A mining lease lapses if an entity fails to start mining operations within two years of the date of execution of the lease or discontinues mining for a period of two years unless the state government is satisfied with the reasons for such delay.

Acquisition by domestic parties versus acquisition by foreign parties

Is there any distinction in law or practice between the mining rights that may be acquired by domestic parties and those that may be acquired by foreign parties?

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only. However, foreign parties can invest up to 100 per cent in the equity of such companies through the automatic route under Indian foreign direct investment policy.

Protection of mining rights

How are mining rights protected? Are

Foreign arbitration awards in respect of domestic mining disputes freely enforceable in your jurisdiction?

There are no special courts or tribunals to adjudicate on mining rights. However, the 2015 MMDR Amendment Act provides for the establishment of special courts to deal with cases of illegal mining. Further, the National Green Tribunal may also adjudicate on disputes regarding environmental non-compliance in any mining activity. India has an independent judicial system that consists of the Supreme Court of India as the apex judicial body under which are the High Courts, subordinate courts as well as the various tribunals.

India is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) as well the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (the Geneva Convention). If a party receives a binding award from a country that is a signatory to the New York Convention or the Geneva Convention and the award is made in a territory that has been notified as a convention country by India, the award would then be enforceable in India.

Surface rights

What types of surface rights may mining rights holders request and acquire? How are these rights acquired? Can surface rights holders oppose these requests?

A mining rights holder is required to obtain surface rights over the area or obtain the consent of the owner to start prospecting or mining operations.

In relation to government-owned land, the selected bidder is granted surface rights by the government authorities. During prospecting, the approval of the government authority, such as the deputy collector, needs to be taken to clear vegetation to construct drains or use any underground water. The rights holder is liable to pay surface rent and water cess for the surface area used for the purposes of mining operations. The mining lease holder must prior to using any land for new surface operations give written notice to the government authority, which has a right to raise objections and restrict the rights holder's use of the surface.

When private landowners grant prospecting licences or mining leases, they may grant surface rights to such third parties according to the terms of their agreement.

Further, the government exercising the power

of eminent domain can acquire land for public purposes such as mining under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. However, this is subject to consent requirements from the surface rights holders and such acquisitions can be opposed.

Participation of government and state agencies

Does the government or do state agencies have the right to participate in mining projects? Is there a local listing requirement for the project company?

Yes. The government and state agencies have a right to participate in mining projects and the public sector companies tend to dominate the mining sector. All companies undertaking mining activity must be incorporated in India.

Government expropriation of licences

Are there provisions in law dealing with government expropriation of licences? What are the compensation provisions?

While there is no formal ability for expropriation, the government has the right to prematurely terminate a prospecting licence or a mining lease.

Protected areas

Are any areas designated as protected areas within your jurisdiction and which are off-limits or specially regulated?

Under the Indian Constitution, the Indian President may notify certain lands as 'scheduled areas' that have a special governance mechanism. Scheduled areas are tribal dominated areas that are underdeveloped and show marked economic disparity. Laws formulated in relation to scheduled areas typically have more restrictions on land acquisitions and transfers. Further, the central or state government may also reserve certain areas (that are not already held under lease or licence) with a view to conserving any mineral. Any mining activity in such reserved areas is only done by government companies.

Duties, royalties and taxes

Duties, royalties and taxes payable by private parties

What duties, royalties and taxes are payable by private parties carrying on mining activities? Are these revenue-based or profit-based?

Royalty

The central government specifies the royalty payments for each mineral and the state government collects the royalty on mining. Royalty in most cases is charged on an ad valorem basis as a percentage of the price notified by the government. Any enhancement to the royalty can only be made once every three years.

Dead rent

A mining rights holder is liable to pay either royalty or dead rent in respect of a mining area, whichever is higher. Dead rent is, therefore, meant to be paid when the mine is closed or is being under exploited. Dead rent is fixed by the central government and is collected by the state. Any enhancement to the dead rent can only be done once in three years.

NMET/DMF contributions

A rights holder has to pay a sum equal to 2 per cent of the royalty as a contribution to the National Mineral Exploration Trust. Contributions to the district mineral foundations are to be fixed by the central government but cannot exceed one-third of the royalty specified.

Other payments

The rights holder may also have to pay, where applicable, surface rent to the surface rights owners or application fees for the licence or lease that are fixed by the central government and collected by the state.

Taxes

The taxes or levies differ in quantum and nature depending on the states. Principal taxes and duties applicable to mining industry are:

- direct taxes, such as corporate tax or minimum alternative tax;
- indirect taxes, such as custom duty, and goods and services tax;
- stamp duty;
- water tax;
- forest-related taxes, such as forest tax (levied on forest produce removed from forest areas), compensatory afforestation charges (levied to promote afforestation and compensate for deforestation), net present value payments of forest land diverted for mining; and
- process is also levied on mineral ores under various legislations.

Tax advantages and incentives

What tax advantages and incentives are available to private parties carrying on mining activities?

Special deductions under Income Tax Act 1961 are allowed for prospecting of minerals. One-tenth of the expenditure on prospecting, extraction and production of certain minerals over five years ending with the first year of commercial production is allowed as a deduction from the total income (subject to the timelines provided in the law). Export profits from specified minerals and ores are eligible for certain concessions.

Tax stabilisation

Does any legislation provide for tax stabilisation or are there tax stabilisation agreements in force?

No. There is no legislation providing for tax stabilisation in India

Carried interest

Is the government entitled to a carried interest, or a free carried interest in mining projects?

No. However, it collects royalty, dead rent, tax and other fees from the licence holder.

Transfer taxes and capital gains

Are there any transfer taxes or capital gains imposed regarding the transfer of licences?

Yes. Capital gains tax is applicable on transfer of licences or lease.

Distinction between domestic parties and foreign parties

Is there any distinction between the duties, royalties and taxes payable by domestic parties and those payable by foreign parties?

As the mines will be owned and controlled by an Indian entity, no such differentiation exists.

Business structures

Principal business structures

What are the principal business structures used by private parties carrying on mining activities?

The principal business structure is usually a limited liability company. Private parties when working together may opt for a joint venture company or a special purpose vehicle.

Local entity requirement

Is there a requirement that a local entity be a party to the transaction?

Mineral concessions in India are granted to Indian nationals or entities incorporated in India only.

Bilateral investment and tax treaties

Are there jurisdictions with favourable bilateral investment treaties or tax treaties with your jurisdiction through which foreign entities will commonly structure their operations in your jurisdiction?

Mauritius and Singapore have been popular destinations for foreign investments in India, especially owing to their low rate of taxation and specific benefits under the double tax avoidance agreements (DTAA) with India. However, amendments to the India–Mauritius DTAA in 2016 now require Mauritian companies to pay capital gains tax arising out of a sale of shares in India. This has a knock-on effect on the taxation of transactions structured out of Singapore, because the India–Singapore DTAA is co-terminus with the benefits available under provisions on capital gains contained under the India–Mauritius treaty. Further, the India–Singapore DTAA has also been amended, on the lines of the amended India–Mauritius DTAA, such that India can tax capital gains that arise from sale of shares of an Indian company owned by a Singapore tax resident.

Financing

Principal sources of financing

What are the principal sources of financing available to private parties carrying on mining activities? What role does the domestic public securities market play in financing the mining industry?

Private parties typically finance mining activities through domestic and foreign debt or equity. India has a mature domestic equity capital market, and large mining companies such as NMDC, Rohit Ferrotec, Vedanta Limited are listed on major stock exchanges in India. Privately owned companies also rely on issuing foreign currency bonds or listing equity on foreign exchanges.

Direct financing from government or major pension funds

Does the government, its agencies or major pension funds provide direct financing to mining projects?

No. However, public sector banks, in addition to private commercial banks and non-banking financial companies, provide debt financing for mining projects in India.

Security regime

Please describe the regime for taking security over mining interests.

A concession holder is free to create encumbrances over the concession obtained through the auction process. The mineral concession is also assignable to a transferee that meets the eligibility conditions. However, no encumbrances can be created over non-transferable mineral concessions.

Restrictions

Importation restrictions

What restrictions are imposed on the importation of machinery and equipment or services required in connection with exploration and extraction?

There are no restrictions on the importation of machinery and equipment required for mining activities. However, customs duty and other duties or cess may be applicable on imports. The government, however, is keen to promote mining and exploration and, therefore, provides certain incentives. For example, capital goods imported for mining under the Export Promotion Capital Goods scheme qualify for concessionary customs duty subject to certain export obligations. Further, low customs duty is applied on capital equipment used for minerals such as nickel, tin, pig iron and unwrought aluminium.

Standard conditions and agreements

Which standard conditions and agreements covering equipment supplies are used in your jurisdiction?

The FIDIC standard agreements have been commonly used for equipment supply agreements in India.

Mineral restrictions

What restrictions are imposed on the processing, export or sale of minerals? Are there any export quotas, licensing or other mechanisms that prevent producers from freely exporting their production?

Certain forms of iron ore, manganese and chrome (set out in schedule 2 of the Indian Trade Classification Harmonised System) can only be exported through identified government-owned entities. Additionally, special chemicals, organisms, materials, equipment and technology items such as titanium alloys can only be exported under a licence from the Directorate General for Foreign Trade. Further, if a mine has been reserved for a

particular end use, the minerals from it cannot be exported.

Further, to ensure that the minerals are available domestically and to reduce exports, the government may impose high export taxes, which can be revised annually during its annual budget sessions.

Import of funds restrictions

What restrictions are imposed on the import of funds for exploration and extraction or the use of the proceeds from the export or sale of minerals?

Indian fiscal policy provides for capital control restrictions, which prevents free convertibility between the Indian rupee and foreign currencies. However, there have been several steps taken to liberalise both foreign equity and debt recently. While previously, investments in the mining sector beyond 74 per cent required prior government approval, the government now allows up to 100 per cent foreign direct investment in Indian companies engaged in the mining business (exploration and extraction).

Indian mining companies can also use up to US\$750 million in foreign debt from recognised lenders or shareholders without Reserve Bank of India (RBI) approval. However, any such debt cannot be used for the following:

- real estate activities;
- investment in capital markets;
- equity investment;
- working capital, except for foreign equity holders;
- general corporate purposes, except for foreign equity holders;
- repayment of rupee loans, except for foreign equity holders; and
- onward lending to entities for the above activities.

There are typically no requirements to use proceeds domestically and Indian companies can repatriate monies by declaring them as profits, dividends or royalty income. However, in certain cases of repatriation, such as acceleration of loans, or repatriation of court awards, prior RBI approval may be required. There are also no export performance parameters for access to foreign exchange.

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Environment

Principal applicable environmental laws

What are the principal environmental laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The principal environmental laws applicable to the mining industry include:

- the Environment (Protection) Act 1986 (EPA);
- the Forest (Conservation) Act 1980;
- the Water (Prevention and Control of Pollution) Act 1974; and
- the Air (Prevention and Control of Pollution) Act 1981.

Further, Mines and Mineral (Development and Regulation) Act 1957 (MMDRA) empowers the central government to frame rules for conservation and sustainable development of minerals and for the protection of environment by preventing or controlling pollution that may be caused by prospecting or mining operations. The Mineral Conservation and Development Rules 2017 (MCDR) regulate environmental aspects of mining and provides for sustainable mining.

The principal regulatory bodies are the Ministry of Environment Forest and Climate Change (MoEF) and the Central and State Pollution Control Board. Specifically, in relation to mining, the Indian Bureau of Mines and the state government also regulate mining.

Environmental review and permitting process

What is the environmental review and permitting process for a mining project? How long does it normally take to obtain the necessary permits?

The Environment Impact Assessment (EIA) Notification 2006 notified by the MoEF under the EPA provisions regulates the grant of environment clearances. The impact on the environment resulting from a mining project is assessed by an EIA study. Consequently, an environmental management plan is prepared and the environment clearance is granted stipulating conditions to minimise impact on the environment from the project.

Further, in the case of mining projects on forest land, the central government may stipulate mitigative measures for diversion of forest land, such as creation and maintenance

of compensatory afforestation.

The EIA process for mining takes a year, if not longer, as the EIA study has to be conducted over three seasons along with public consultations, followed by review by the appraisal committee. If forest land is involved, then the clearance for diverting the forest land also needs to be obtained in parallel. While previously the process of getting environmental clearance was known to stretch for two years or more, under the present policy to encourage industry and development, clearances are granted in less time. The government has launched a single-window integrated environmental management system called Pro-Active and Responsive facilitation by Interactive, Virtuous and Environmental Single-window Hub, where a project developer can apply for environmental clearances.

Following the Mineral Laws (Amendment) Act 2020, the EIA Notification 2006 was also amended to reflect that any new lessee successful in an auction for a mineral block (for which the earlier lease granted before the Mines and Mineral (Development and Regulation) Amendment Act 2015 will expire) will be deemed to have acquired valid prior environmental clearance vested with the previous lessee. It will be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee for a period of two years from the date of commencement of the new lease or until the new lessee obtains a new environmental clearance.

Sustainability

Do government agencies or other institutions in your jurisdiction provide incentives or publish environmental and social governance (ESG) guidelines for green projects?

The Ministry of Corporate Affairs issued the National Guidelines on Responsible Business Conduct in December 2018, which have as a core principle that businesses should make efforts to protect and restore the environment. There are several mechanisms to promote environmentally sustainable mining in India, which include a mandatory EIA, forest clearance provisions, air and water pollution prevention acts and adherence to the sustainable development framework under the MMDRA. In addition, the MMDRA and associated rules prescribe detailed mining standards (specifically with regard to carrying out scientific and environmentally friendly mining) by mining companies. Accordingly, the Ministry has launched a star rating system through the

Indian Bureau of Mines, which awards a star rating to mining companies for their efforts and the initiatives taken for implementation of the sustainable development framework in mining.

Closure and remediation process

What is the closure and remediation process for a mining project? What performance bonds, guarantees and other financial assurances are required?

A mining rights holder has to prepare two mine closure plans – a progressive mine closure plan and a final mine closure plan. The progressive mine closure plan is submitted with the mining plan while the final closure plan is submitted for approval two years prior to the proposed closure. The rights holder has to ensure that the protective measures including reclamation and rehabilitation works are carried out according to the approved mine closure plan. The government authority must certify that all protective works in accordance with the final mine closure plan have been carried out.

Further, for concessions granted other than by auction, a financial assurance in the form of bank guarantee has to be furnished for proper implementation of the mine closure plan, failing which the state government may realise this bank guarantee. For concessions granted by auction, if proper closure and remediation according to the mine closure plan is not followed, the performance security can be realised as per the provisions of the mine development and production agreement signed between the parties.

Restrictions on building tailings or waste dams

What are the restrictions for building tailings or waste dams?

Under the MCDR, the rights holder must ensure that:

- overburden, waste rock, tailings and slimes are stored in separate dumps;
- the waste dams are properly secured to prevent floods and escape of material in quantities that may cause degradation of environment;
- the site for waste dams, tailings or slimes is as far as possible on impervious ground to ensure minimum leaching; and
- the waste dumps are to be suitably terraced and stabilised through vegetation or otherwise.

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Inspection of mines is carried out by the Indian Bureau of Mines in an order of priority. For example, fully mechanised large mines are to be inspected at least twice a year. Mines, where approved mining plans are modified, have to be inspected based on the increase in production; for example, a mine where production is increased by more than 50 per cent has to be inspected every three months.

While no specific qualifications are detailed for persons in charge of operation and management of dam waste, qualified and experienced mining engineers and geologists need to be employed by mining companies for conducting prospecting and mining works. There are no requirements for mandatory alarm systems or emergency drills with local communities. The government has the primary responsibility for the rescue of people in event of a dam failure; however, under the doctrine of absolute liability in India, the mining companies would be liable for the dam failure or loss of life or injury caused by the dam failure.

Health and safety, and labour issues

Principal health and safety, and labour laws

What are the principal health and safety, and labour laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Mines Act 1952 sets out provisions regulating mining, health and safety of labour, employment terms, inspection of mines, etc. The Mines Rules 1955 set out the framework for medical examination of labour, basic health and sanitation provisions and welfare amenities for the miners and their families. The Directorate General of Mines Safety is the Indian government agency regulating safety in mines.

Management and recycling of mining waste

What are the rules related to management and recycling of mining waste products? Who has title and the right to explore and exploit mining waste products in tailings ponds and waste piles?

The Hazardous and Other Wastes (Management and Transboundary Movement) Rules 2016 (the Hazardous Waste Rules 2016) is the primary legislation relating to management and recycling of mining waste products. The Ministry of Environment Forest and Climate Change, in granting environmental clearance for mining operations, specifies conditions and restrictions for management and recycling of waste. The State Pollution Control Board in issuing consent to operate also specifies conditions. The lease

holder has the right to explore and exploit mining waste products in tailing ponds and waste piles subject to any restrictions under Hazardous Waste Rules 2016.

Use of domestic and foreign employees

What restrictions and limitations are imposed on the use of domestic and foreign employees in connection with mining activities?

Under the Mines Rules 1955, women are restricted from being employed in underground mines and in any above-ground mine except between the hours of 6am and 7pm. Further restrictions can also be imposed by the central government.

The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 specify that the rights holder cannot employ a foreign national in the mining operations without the prior approval of the central government. There are also standalone legislations that govern employment of foreign persons. A foreign employee must have a valid employment visa and be registered under the Registration of Foreigners Act 1939 if the visa duration is for more than 180 days.

Social and community issues

Community engagement and CSR

What are the principal community engagement or CSR laws applicable to the mining industry? What are the principal regulatory bodies that administer those laws?

The Companies Act 2013 and the Companies (Corporate Social Responsibility) Rules 2014 contain the primary CSR obligations of companies in India. The CSR provisions are applicable to companies with an annual turnover of 10 billion rupees and more, or a net worth of 5 billion rupees and more, or a net profit of 50 million rupees. These companies must spend 2 per cent of their average profit in the past three years on CSR activities. The Companies Act 2013 lists an indicative set of CSR activities such as environmental sustainability, education, sanitation, enhancing vocational skills, etc. Companies may implement these activities, taking into account the local conditions after seeking board approval. A report on the CSR policy must be published by the company on its website and if the company fails to spend the prescribed amount, the report should specify the reasons. The Ministry of Corporate Affairs is the principal regulatory body for the Companies Act 2013.

Specifically, in relation to mining, the Mines

and Mineral (Development and Regulation) Amendment Act 2015 provides for setting up of the district mineral foundations (DMFs) in all districts affected by mining-related operations. A rights holder is required to contribute to the DMF at rates specified by the central government that cannot exceed one-third of the royalty. The state governments have administrative jurisdiction over the DMFs in their region. In 2015, a scheme was also launched to provide for the welfare of areas and people affected by mining related operations, using the funds generated by DMFs.

Rights of aboriginal, indigenous or disadvantaged peoples

How do the rights of aboriginal, indigenous or currently or previously disadvantaged peoples affect the acquisition or exercise of mining rights?

Much of India's mining resources are largely based in underdeveloped tribal areas. One of the major sources of conflict is land acquisition in such tribal areas for mining. The governor of the state is vested with the power to make regulations pertaining to scheduled areas, including the power to 'prohibit or restrict transfer of land by or among scheduled tribes in such areas'.

Various states have enacted their own legislation to deal with issues of land acquisition specific to certain tribal regions. These legislations govern the land rights of the tribes, including the transfer and utilisation of Scheduled Areas in the states, and incidence of tenancy. The major thrust is to define various categories of landholdings among the tribal classes, protect the land rights of the tribes against high rents or transfer of land, regulate the transfer of such lands and make provisions for the restoration of illegally alienated land.

The state government is also required to ensure that the panchayats at the appropriate level and the gram sabha have the power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawfully alienated land of a scheduled tribe. Tribal rights must be settled and the tribes must agree through the gram sabha before industry or mining companies can get clearance to use tribal land.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (the LARR Act) is the overarching legislation that governs land acquisition in the country. The LARR Act recognises the special status of tribal

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lands in the scheduled areas. It provides that acquisition of land must not be made in the scheduled areas as far as possible and when the acquisition does take place, it must be done as a demonstrable last resort. The state government can impose rehabilitation and settlement obligations on the sale and purchase of land acquired through private negotiations and prescribe the limits and ceilings for this purpose.

The Supreme Court has also upheld the cultural and religious rights of tribes over tribal areas. In the 2013 Vedanta case, the Supreme Court refused to allow Vedanta, a mining company, from sourcing bauxite from the Niyamgiri Hills, Odisha, which are held sacred by the local Dongria Kondh tribe.

International law

What international treaties, conventions or protocols relating to CSR issues are applicable in your jurisdiction?

India is party to many international treaties, conventions or protocols that relate to CSR issues in a general manner. However, there is no mandatory application of these in India in relation to CSR issues. Various global guidelines such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the International Labour Organization's Indigenous and Tribal Peoples Convention Tripartite Declaration of Principles on Multinational Enterprises and Social Policy can be voluntarily applied in India.

Anti-bribery and corrupt practices

Local legislation

Describe any local legislation governing anti-bribery and corrupt practices.

The Prevention of Corruption Act 1988 (PCA) is the principal legislation for prevention of corruption and bribery in India. The PCA criminalises receipt of illegal gratification by public servants and its payment. Such illegal gratification can be pecuniary or non-pecuniary in nature. It is not necessary for there to be an actual payment of bribes; even an attempt to bribe attracts liability under the PCA. The Central Bureau of Investigation is the central agency that undertakes investigation and prosecution of offences pertaining to bribery and corruption and the states have their own anti-corruption wings. The Central Vigilance Commission, established by the Central Vigilance Act 2003, is the primary agency for monitoring all vigilance activity under the central government. It exercises superintendence over inquiries into offences

under the PCA. The central government has also enacted the Whistle Blowers Protection Act 2011 to protect anyone who exposes wrongdoing in government bodies or projects.

Public officials are further governed by specific service rules that prohibit such officials from receiving gifts, lavish hospitality and other perks beyond certain threshold levels. It also prevents public officials from engaging in other trade or business and employment. The Foreign Contribution Regulation Act 2010 restricts acceptance of foreign contributions or hospitality by government servants, legislature members, political party candidates, government corporation employees without permission of the central government. The Lokpal and Lokayuktas Act 2013 provides for an ombudsman body called the Lokpal at the central level, and Lokayukta, at the state level, to inquire into allegations of corruption against public functionaries.

Foreign legislation

Do companies in your country pay particular attention to any foreign legislation governing anti-bribery and foreign corrupt practices in your jurisdiction?

Companies are vigilant of the US Foreign Corrupt Practices Act 1977, which prohibits bribing of foreign officials for the purpose of business. It is important because it applies not only to US entities and persons in the United States but also persons abroad working for US entities. This could affect Indian companies that are in partnership with US-based companies or have an international footprint in the United States. The UK Bribery Act 2010 is also relevant to Indian companies because it imposes corporate criminal liability on United Kingdom and non-UK based companies having business in the United Kingdom, equally, irrespective of whether any part of the offence of giving bribes took place in the United Kingdom or not. Companies with ties to France are also likely to pay attention to the French anti-bribery law Loi Sapin II, which came into force in 2017.

Disclosure of payments by resource companies

Has your jurisdiction enacted legislation or adopted international best practices regarding disclosure of payments by resource companies to government entities in accordance with the Extractive Industries Transparency Initiative (EITI) Standard?

No. India has not adopted the EITI Standard.

F Foreign investment

Foreign ownership restrictions

Are there any foreign ownership restrictions in your jurisdiction relevant to the mining industry?

Mineral concessions are granted to Indian nationals or entities incorporated in India only. However, 100 per cent foreign direct investment (FDI) is allowed in exploration and mining of all metallic minerals as well as diamonds and precious stones through the automatic route, by way of equity participation in a company incorporated in India. With prior central government approval, 100 per cent foreign direct investment is allowed in connection with mining and mineral separation of titanium-bearing minerals, subject to certain restrictions.

I International treaties

Applicable international treaties

What international treaties apply to the mining industry or an investment in the mining industry?

While there is no comprehensive international law on mining, a number of treaties, conventions and declarations have provisions for protecting the environment and sustainable development that are relevant to the mining industry in India. These include:

- the Stockholm Declaration 1972, which declares that nations have the right to exploit their own resources pursuant to their own environmental policies but they also have the responsibility to ensure that such activities do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction;
- the UN Convention on the Law of the Sea 1982, which regulates deep seabed exploration and mining;
- the Convention on Biological Diversity 1992, which calls on states to promote environmentally sound and sustainable development in areas adjacent to protected areas;
- the UN Framework Convention on Climate Change 1992 and Kyoto Protocol 1997 in relation to the decrease of emission of greenhouse gases;
- the Rio Declaration 1992 and Johannesburg Declaration 2002 concerning sustainable development; and

the Minamata Convention 2013 to protect human beings from harmful mercury emissions.

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India is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which relate to foreign arbitration.

Update and trends

Recent developments

What were the biggest mining news events over the past year in your jurisdiction and what were the implications? What are the current trends and developments in your jurisdiction's mining industry (legislation, major cases, significant transactions)?

With the impact of the covid-19 pandemic on mining and the reduced demand for minerals,

many stakeholders have asked for tax rationalisation and changes to the duty structure to protect the mining industry. On 16 May 2020, the central government announced measures under the 'Aatmanirbhar Bharat Abhiyaan' to support the Indian economy in the fight against covid-19. These measures include structural reforms to boost growth and employment, and introduce state-of-the-art technology, especially in mineral exploration by:

- introducing a seamless composite exploration-cum-mining-cum-production regime;
- offering 500 mining blocks through an open and transparent auction process;
- introducing a joint auction of bauxite and

coal mineral blocks to enhance the aluminium industry's competitiveness (as it will help the industry to reduce electricity costs);

- removing the distinction between captive and non-captive mines to allow the transfer of mining leases and the sale of surplus unused minerals, leading to more efficiency in mining and production;
- rationalising stamp duty payable at the time of awarding mining leases; and
- through the Ministry of Mines, developing a Mineral Index for different minerals.

Further details on these reforms are expected to be released in the coming months.

All about commercial mining and how it changes the coal production game in India

The Modi govt is hoping commercial coal production will make India self-sufficient and bring down its import bill.

Paving the way for commercial mining, India Thursday initiated the auction of 41 coal blocks that have a capacity to produce 225 million tonnes of coal per year.

Launching the auction, Prime Minister Narendra Modi said the onset of commercial mining will bring the sector out of decades of lockdown.

"We are not just launching the auction for commercial coal-mining today, but bringing the coal sector out of decades of lockdown," PM said.

The Print looks at what commercial mining is and what it means for coal production.

What is commercial mining?

Commercial mining allows the private sector to mine coal commercially without placing any end-use restrictions. The private firms have the option of either gasification of the coal or exporting it.

They can also use it in their own end-use plants or sell them in the markets. The government expects more than Rs 33,000 crore of capital investments over the next five to seven years in the sector.

Further, with 100 per cent foreign direct investment allowed in the coal sector, global companies can also participate in the auctions.

The complete freedom to decide on sale, pricing, and captive utilisation is expected to attract many private sector firms to participate in the auction process.

The government expects these steps will generate employment and reduce India's import bill.

Who all can bid under the auction?

The government has done away with all eligibility criteria, allowing even firms with no prior coal mining experience to participate in the auction. The firms will only be required to make an upfront payment.

The revenue sharing will be on an ad valorem (the value of the transaction) basis and not on

the basis of a fixed amount.

The present bidding terms also allow other minerals to be extracted from these blocks. Further, the coal ministry will also help the private sector in getting statutory approvals like environment and other approvals.

Was the private sector never allowed in mining?

Private sector participation was permitted until the early 1970s. The Indira Gandhi government announced the nationalisation of the coal blocks in two phases between 1971 and 1973.

The Modi government's reforms will effectively end state-owned Coal India's

ABOUT THE AUTHOR

The article was published by the print and written by **Remya Nair** who works as a Senior Associate Editor with The Print writing on political economy.

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monopoly over mining and selling of coal.

Is this the first attempt by govt to open up the sector?

After the Supreme Court cancelled the coal block allocations made to the private sector by the Congress-led United Progressive Alliance government in 2014, the Narendra Modi dispensation had brought in the Coal Mines (Special provisions) Act of 2015 to return these coal blocks to the private sector through auctions.

But there had been end-use restrictions and the private sector was not allowed to trade into the market making it unattractive for the private sector. Further in 2018, private sector firms were allowed to sell upto 25 per cent of the output in the market, but this also saw a lukewarm response from the private sector.

Meanwhile, sectors like power, aluminium and steel are likely to be the biggest beneficiaries with enhanced availability of coal.

India imports nearly 250 million tonnes of coal from other countries despite having the world's fourth largest coal reserve.

The government is hoping that the involvement of the private sector will increase production and make India self-sufficient in meeting its internal coal requirements.

Reforms in non-coal mining: Ministry starts consultations to fine-tune proposals

According to an order issued by the mines ministry on June 3, the system of embedded clearances will be tried in at five greenfield blocks in each mineral-rich state on a pilot basis, with an intent to scale it up over time.

The ministry of mines has started a consultation process with other ministries on key reform proposals including introduction of seamless exploration-cum-mining-cum-production regime and doing away with the distinction between captive and non-captive mines before the cabinet for its approval.

"We are in discussion with other ministries. Once that is done, we will take them before the cabinet for its approval," a senior mines ministry official said.

The proposal to introduction of the seamless exploration-cum-mining-cum-production regime of virgin areas had been among the long-pending wish-lists of the mining industry. Announcing the reform proposals on May 16, as part of the Atmanirbhar package, finance minister Nirmala Sitharaman had said five hundred blocks would be offered through this open transparent mechanism, without giving any time-frame.

Proposal was also there to do away with the existing cumbersome and distinction between captive and non-captive mines. The finance minister had also announced the concept of joint auctioning of bauxite and coal mines for the aluminium sector.

Meanwhile, the mines ministry has come out with a scheme under which non-coal, non-fuel mining blocks will have most clearances ready before these are put up for auction.

According to an order issued by the mines ministry on June 3, the system of embedded clearances will be tried in at five greenfield blocks in each mineral-rich state on a pilot basis, with an intent to scale it up over time.

A government-level project monitoring unit (PMU) will be tasked with the mandate to obtain the clearances – in fact, the PMU will be the applicant for the assorted clearances required for a mining project. All expenses related to the approvals will be recouped from the successful bidders later.

As many as 20 clearances are required before the mining can start, including the environmental and forest clearances, and the approval process is tedious. On an average, environmental and forest clearances take 270 and 530 days, respectively, at present.

Apart from the sticky regulatory issues and the tedious delays associated with grant of environmental and forest clearances, the enormity of taxes and levies also continue to be an irritant for investors in non-coal mining, where India's performance is far below potential, making it vulnerable to huge import bills. Indian levies, on average, are 40-45% (without including the corporate tax) compared to 5-14% globally.

Why Gold, and Why Now

For thousands of years gold is the ultimate store of value. Currently, gold is undervalued as there are massive bubbles in asset markets and central banks continue to print money, which supports these bubbles. This is an unsustainable situation; and when the bubbles burst the gold price will rise.

Gold is the ultimate store of value, as it's the only globally accepted financial asset without counterparty risk, and it has preserved its purchasing power throughout history. In the long-term, the stability of gold's value is unparalleled.

Because gold is scarce and immutable, it has been used as money for thousands of years. Gold's first use was for adornments—jewelry, regalia, and prestige goods. As early as the 5th millennium BC gold beads of different sizes and purities were manufactured through serial production in Varna, Bulgaria. The semi-finished products were

worn in a necklace, and possibly traded.

Around 3000 BC weights and scales were invented, which allowed precise measurement of materials and enhanced trade. Gold developed as a store of value, unit of account, and symbol of wealth. By 600 BC coinage was invented in Lydia, what is now Turkey, which promoted gold to be used as a currency. In many civilizations ever since gold was either officially money, or used as a store of value.

Since 1971, the World has been on a pure "paper money" standard despite the fact that bank notes are hardly used nowadays. Most of the time, what is used as money are digital book entries. Whether in paper or digital form, money issued by governments is commonly referred to as fiat money.

The Price of Gold Goes Up

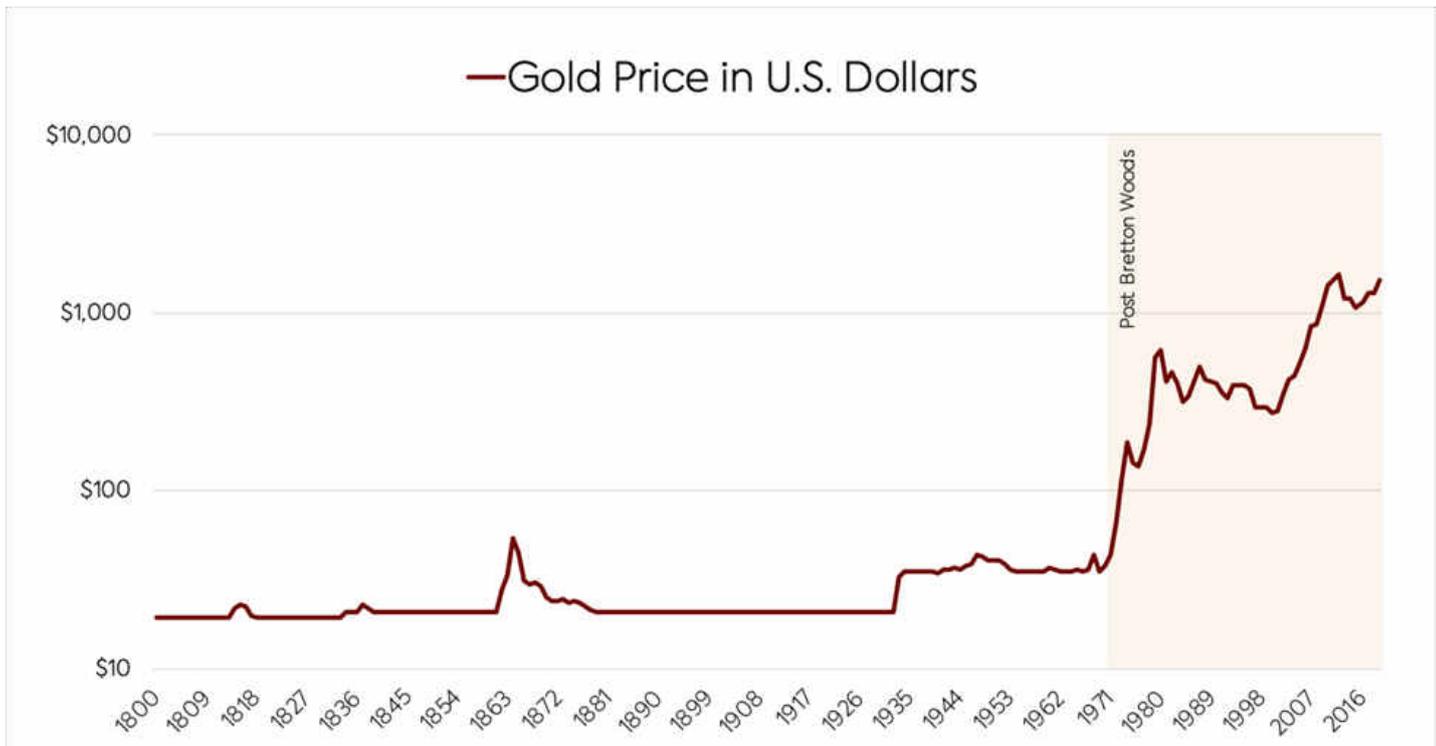
Because fiat currencies can be created boundlessly, over time their value declines, and thus

the price of gold denominated in fiat money goes up.

In August 1971—when the last remnants of the gold standard were abandoned—the gold price was \$41 U.S. dollars per troy ounce. At the end of May 2020, the gold price had reached \$1,729 dollars per ounce, an increase of more than 4,100%.

Although, the gold price doesn't go up in a straight line, it has always "caught up." Over time, the price of gold has always compensated for devaluing fiat currencies. Gold's purchasing power has remained markedly stable in the long run.

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Gold Preserves its Purchasing Power

Governments aim for stable prices of consumer goods. But with the seductive ability to “print” money, they always create too much. The printed currency loses value, and prices of consumer goods go up.

Because the gold price keeps up with prices of consumer goods, gold preserves its purchasing power. Since 1800, gold’s purchasing power in the U.S. has been remarkably stable. It became more volatile after 1971, but has kept trending slightly upwards.

This is the power of gold: it preserves personal as well as generational wealth.

So, while fiat currencies lose their value relative to consumer goods, gold has gained in value relative to consumer goods, and not only in the U.S.

On the Voima Gold homepage you can see that since the euro was created in 1999, the gold price in euros has gone up by 550%. When corrected for (consumer price) inflation, gold in the eurozone has increased in purchasing power by 350% in 20 years.

Gold Keeps up With Other Financial Assets

Hedge Fund Manager Ray Dalio has compared storing value in gold versus government bills (bonds with a maturity of less than one year), since the classic gold standard has been gradually dismantled (1912). Government bills are thought to be safer than bank

deposits, although both have counterparty risk, unlike gold.

Dalio computed the annual returns in real terms, which is done by subtracting inflation from interest rates. Gold doesn’t have an interest rate—when it’s not lent—it just goes up in price. The result over 100 years is that in major economies the average annual return of government bills was - 0.2%, while gold’s return was 2.2%.

The poor result of the bills is because they are denominated in currencies that have been strongly debased since 1912. The U.S. dollar, for example, lost more than 98% of its value against gold over this time horizon.

Compared to stocks and long-term bonds gold’s performance is impressive as well. With dividends reinvested, gold has kept up with the U.S. stock market since 1971, and outperformed it since 1999. Although, gold did worse than the U.S. stock market since 2009.

With interest reinvested, gold has outperformed U.S. Treasuries (government bonds) since 1971, 1999, and 2009.

Reformances of all assets in the chart above are measured by their compound annual growth rate, and are not corrected for inflation.

As you can see, inflation is included in the chart, and “U.S. cash” doesn’t keep up with it. Clearly, the ones that do not own gold, but have a bank savings account, will see their wealth diminish.

Every Investment Portfolio Needs Gold

Regularly, when stock markets crash investors flee to gold, causing the gold price to rise. Stocks and gold are often negatively correlated. For investment purposes gold is an excellent diversification. When gold is added to an investment portfolio it lowers volatility and improves performance. Owning gold is for everyone and for all seasons.

CPM Group calculated that the best risk-return balance of an investment portfolio is reached when it includes 20% of gold (next to an equal share of stocks and bonds).

The Future of Gold

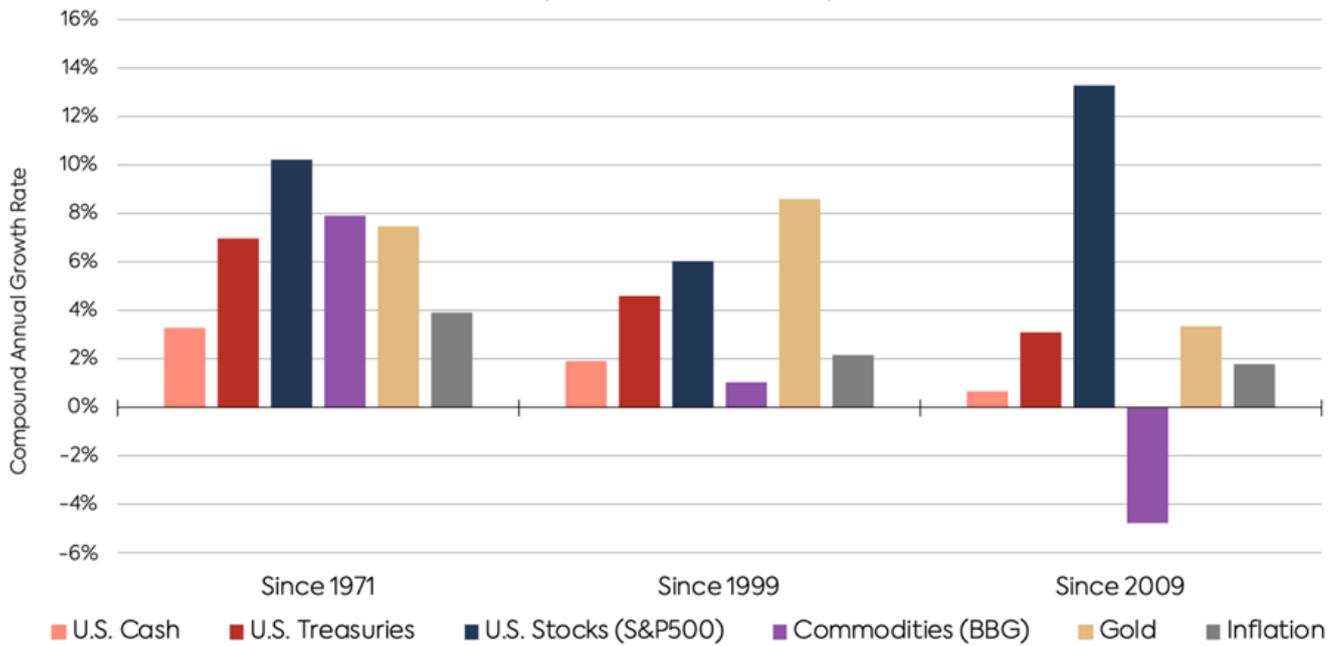
As mentioned, since 1971 the price of gold hasn’t gone up in a straight line. Naturally, the question arises, is it now a good time to buy gold? I believe it is.

I expect the gold price to rise going forward, because there are currently huge bubbles in asset markets and central banks continue to print money to support these bubbles. This year alone, the Federal Reserve has expanded its balance sheet from \$4 trillion to \$7 trillion dollars. A whopping \$3 trillion dollars have been printed in just 4 months. The stock “price to earnings ratio” has reached record levels. Needless to say, this is a highly unsustainable situation; and when the bubbles burst more investors will turn to gold.

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Gold's Performance Compared to Other Financial Assets

(As of 31 December 2019)



Since 1971, instead of gold being the centerpiece of the international monetary system, government bonds have taken its place. Capital has been invested in sovereign bonds based on the (false) belief they are risk-free. Now, the sovereign bond market is in a bubble.

One sign of the bubble is that debt obligations of many developed nations have a negative interest rate. This reflects these securities are strongly overvalued. Another sign is that the world has never been this much in debt. World debt to GDP is currently well over 330%.

Over-investing in sovereign bonds—incentivized by central banks—has caused governments to borrow beyond their means. For these countries their debt to GDP levels are skyrocketing, and are unsustainable. In the years ahead, global debt levels can only be lowered through debt restructuring or inflation, and both are bullish for gold.

The Threat of Bank Bail-ins

Last but not least, a serious threat for people's fiat savings held at commercial banks, are "bail-ins." In 2014, the European Union adopted the Bank Recovery and Resolution Directive. The implemented rules dictate that when a bank becomes insolvent, the banks' shareholders and creditors pay the costs through a bail-in mechanism.

Money held at banks is technically a loan to the bank. This makes depositors "unsecured creditors" of the bank. Under the current rules, when the bank becomes insolvent, deposits will be seized to save the bank. Outside the EU bail-in rules have been implemented as well.

The reason why people are still holding large sums of fiat money at banks, is because many aren't aware of the risks.

Conclusion

Above is a list of reasons why it makes sense

to own gold. Gold is the ultimate store of value, and offers protection from inflation caused by reckless money printing by central banks. Currently, governments want inflation, as politically it's the easiest way of lowering the debt burden. On May 7, 2020, Ray Dalio wrote, "Printing money is the most expedient, least well-understood, and most common big way of restructuring debts."

The stock market is currently overvalued, as economic growth around the world is collapsing due to the corona crisis. Stock indices haven't corrected yet, because they are high on the newly printed money. On June 24, 2020, Money Manager Jesse Felder wrote (based on calculations), "the current disconnect between stock prices and sustainable profits is, in fact, greater than anything we have seen in modern history." Hence, I believe gold will perform better than stocks in the years ahead.

Odisha Mining Auction 2020 vis-à-vis Employment : A boon or curse?!

Subhransu Bhusan Das: Sr. Manager (Geology) KJSA & Co Barbil

The state Iron and Manganese ore reserves are accounting for 35% and 27% of total resource of the country respectively which make Odisha to stand out in the crowd. As we are stepping into the '20s, the increasing demand of iron and steel is knocking an

invisible pressure on the production of iron and manganese ore. With invincible techniques, the mining of iron and manganese ore are not only satisfying the urge of people but also engendering a wide sector for employment. Currently, many major iron and manganese mines have

undergone auction and successfully bid by many renowned companies. The opening of many pioneer companies in a mineral rich state like Odisha could not only progress the state economy but also empower the indigenous people and provide a large platform of

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engagement which ultimately contribute to the betterment of society. But the onset of new companies in Odisha 2019- 20 auction puts a question mark on the job security of several thousand direct and indirect employees. Since, the previous leaseholder on loss of rights and business had noticed the retrenchment of respective employees from 1st April 2020 which put their livelihood at stake. The COVID- 19 pandemic situation in India as well as Odisha also has worsens the ambiguity regarding the job security of existing workers. Concerning the risk of huge unemployment and subsistence of more than 35000 direct and indirect employees in Iron and Manganese sectors, the Govt. of Odisha has remained silent and no significant actions has been taken yet. Simultaneously, the stillness of successful bidding companies tends to rupture the socio- economic conditions of existing employees. The current auction rule and huge payment structure including TAX, Royalty, DMF, NMET, NPV, Stamp duty along with revenue on

sale value towards the mining operation, may cause a striking financial constrain for the new bidding companies. Now the question is how the company will get profit if they will pay more than 100% revenue along with the above dues? If it's not profitable then it will be difficult for the company to hire & pay the existing employees.

On the other hand, the pre-existing lessee has already paid the NPV, DMF, NMET, Stamp Duty, CA land against forest diversion for the project & the same thing has to be paid by the new lessee for the same project. So government will get two times profit on this. So now some previous lessee may want the refund of the same as the new lessee has to pay it or the new lessee may not want to pay the same as it has already been paid for the same project. There may be a debate on this in near future.

So, observing the status quo the mining employee's welfare has now become the most perplexing enigma in Odisha, putting a huge question mark on Govt. as well as successful

bidders even also the employees, what they will do if they lose their jobs. There is no such rule in labor act or mining auction rule in favor of the existing employees. In near future the new bidder may consider this loss but few suggestions may acceptable to maintain equilibrium between Employment and Industry. The pre-existing direct and indirect employees should have given the first priority to collaborate with new lease holder (as previously many companies have done this). Government should take distinct action regarding the engagement of local people and existing employee without rupturing socio-economic stability of the employer. A performance-based engagement should be practiced by the new successful bidding companies for their growth. As government is getting huge revenue, there should be some investment towards skill development or other alternate way so that people may not be panic during this type of situation.

Glaucosite : Existing resource in India

Uses - Exploitation- Conclusions & Recommendations

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Glaucosite is chemically Potassium Sodium Calcium Iron Aluminium silicates and used as potash fertiliser.

It is found commonly associated with sand, sandstone, shale, marl and occasionally with limestone in the rock formation ranging in age from Precambrian Bhima sediments of Karnataka and Andhra Pradesh, Vindhyaans of Uttar Pradesh, Madhya Pradesh, Rajasthan and Bihar through Cretaceous and Eocene of Ladakh, Garhwal, Rajasthan and Assam to recent offshore sediments of Triandrum coast, Bay of Bengal, coasts of Andaman-Nicobar island (Virendra kumar and Bakliwal, P.C 2005). Total resource of Glaucosite as per IBM is around 1968 million tonn in India (IBM, 2016).

USES : Potash is an essential nutrient for protein synthesis and it aids plants to use water more efficiently. Glaucositic sandstones / greensands are used directly in acidic soils in eco- friendly manner, as glaucositic sand mixes homogeneously

with the soil and provides potash as nutrients for plants. It also increases soil fertility and improves soil texture, porosity and permeability due to more or less uniform grain size. Potassium chloride (KCl) is the principal fertiliser product with 60-62% of K₂O equivalent. Other salts for fertiliser use are potassium sulphate, potassium magnesium sulphate and potassium nitrate. Potassium chloride and potassium nitrate are used in manufacture of glass, ceramics, soap, synthetic rubber and chemicals. Potassium nitrate is used in explosive manufacture. Potash is also used as a raw material for manufacturing complex fertilizers (IBM , 2016).

COMMERCIAL EXPLOITATION : There is no commercial exploitation of potash from Glaucositic sandstone or from deep seated marine evaporates sequence present in Nagaur –Ganganagar basin (Rajasthan) . The entire requirement of potash for application in fertilizers is met

through imports till today. Indian Potash Ltd (IPL) is the largest importer of Muriate of Potash fertilizers (MoP). It imported 4 million ton from Belarus, Russia and Canada in 2016-17. Since Some studies were carried out by Geological survey of India for applicability of Indian Glaucosite as fertilizers (Virendra kumar and Bakliwal, P.C 2005). So it is high time now that government agencies should reevaluate these glaucosite resources present in india especially in Madhya Pradesh, UP and Rajasthan and its applicability. As our country is going through tough phase due to Covid 19 epidemic so spending- money in imports is not at wise and advisable.

CONCLUSIONS: We are not doing any commercial exploitation inspite of having Glaucosite resources (indicated and inferred category) in India especially in states of Madhya Pradesh, Uttar Pradesh and Rajasthan. So it reflects sorry state of affairs on our side. There was no attempt to advertise these areas by Government as

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composite license (PL CUM ML) for private companies for further exploration and development of resource. So it is upto policy planners to look into these matters seriously.

RECOMMENDATIONS :

1. We should encourage our exploration and mining companies to further explore these glauconite areas for proving the resource. So Composite License (PL CUM ML) should be given without auction to exploration and mining companies on first cum first basis
2. We should encourage companies to

prepare fertilizers from Glauconite which is potential source of potash and also use in other industries.

3. Our whole effort should be to explore and exploit these Glauconite resources available in the country

Indian ministries want to limit public consultations that are necessary before approving projects

After the coal ministry, the Ministry of Mines wants exemptions.

Following in the footsteps of the coal ministry, which secured exemption from public hearings for capacity expansion of coal mines by up to 40%, the Union Ministry of Mines has now sought a similar exemption for non-coal mining projects.

Though it has not yet recommended such an exemption, an expert panel of the environment ministry has asked the mines ministry to justify the exemption, after which it will make a decision. However, the exemption, if given, is expected to be controversial as the one given to the coal ministry has already been facing a legal challenge. The issue was discussed during the June 12 meeting of the Ministry of Environment, Forest and Climate Change's Expert Appraisal Committee of non-coal mining projects.

The minutes of the Expert Appraisal Committee meeting noted that the Ministry of Mines has requested that "non-coal mining projects involving increase in production capacity up to 40% may also be exempted from the requirement of public hearing" subject to conditions deemed necessary.

In July 2017, another Expert Appraisal Committee, in a recommendation for coal mining projects, said, "exemption from public hearing while considering grant of environmental clearances to the expansion projects of coal mines, involving increase in production capacity up to 40% in two [to] three phases after the due diligence and subject to fulfilment of certain requirements."

Following this, the Ministry of Environment, Forest and Climate Change in September 2017 approved the recommendation, allowing coal mine expansion up to 40% of capacity if there is no increase in area for the proposed expansion. It had also held that such an expansion can be allowed if "mineral transport is through conveyor system up to

the silo and loading to railway wagons, and not by road." During the June 12 meeting, the MoEFCC briefed the expert panel that the same conditions on which such an exemption was allowed to the coal ministry may not be relevant to the non-coal mining projects. "Therefore, the ministry decided to refer the matter to the EAC non-coal mining sector for deliberation and recommendation of certain requirements which would be relevant and implementable in non-coal mining projects," noted the minutes of the EAC's June 12 meeting.

Public hearings are a requirement under the environment clearance process under which people of an area affected by any project, whether infrastructure or mining, put forward their concerns about a particular project. These hearings are attended by officials of the company doing the project as well as officials of the pollution control board of that state. The concerns raised in these hearings are then recorded and the expert committees of the environment ministry during their meetings could seek the project proponent's reply to such concerns.

An exemption from public hearings for their existing projects would help industries speed up the process of expansion. However, the concern is that expansion of a project up to 40 percent is a substantial increase and doing away of the public hearing process in these cases could mean ecological concerns of locals may not be addressed.

According to the Ministry of Mines, India has huge resources of minerals and the mining sector is an important segment of the Indian economy. The country produces at least 87 minerals, which includes four fuel, 10 metallic, 47 non-metallic, three atomic and 23 minor minerals – including building and other materials. As per the official data, the value of mineral production in India has increased "spectacularly" in the last 60 years and in 2015-'16 is about Rs 2.82 trillion.

Flouting international commitments

Environmental lawyer Rahul Choudhary said the implications of a decision to omit public hearings for mining expansions would be significant considering the impact it would have on communities living around such mines and their livelihoods. It will also have impacts on forests and on the environment, including the increased pollution load. He stressed that there are many cases of mines not complying with conditions given in the environment clearance and expansion of 40% is a substantial

"Public hearing was included in the environment impact assessment process keeping in mind the country's international commitment. Now, if we take such a decision, it will mean backtracking on our international climate commitments. If we ignore and circumvent public participation in the process, then what kind of democracy are we even talking about," Choudhary told Mongabay-India.

"Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided," notes the Principle 10, adopted in 1992 as a part of the Rio Declaration on Environment and Development to which India is a signatory.

Impact on ecology

In the June 12 meeting, the expert panel was briefed about the major differences in coal and non-coal mining, like mining areas for coal are mostly valleys while for non-coal

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minerals they are hillocks. It also highlighted that the majority of the non-coal mines are located away from the habitation and hence the impact of emissions on the habitation is lower compared to coal mines.

The expert panel considered the arguments and held that the proposals in the non-coal mining sector is unlike coal mining, “diverse in nature in respect of shallow deposits; deep-seated deposits; the magnitude of mining; major minerals, minor minors, strategic minerals, replenish deposits, etc.” It also noted that the coal mines are generally operated by the public sector units and big corporates, whereas the non-coal mines, the operators are of very wide range including government, PSUs and private, therefore the infrastructure and organisation structure available is unlike coal mining.

Given these factors, the Expert Appraisal Committee was of the view that it cannot

discriminate the minerals but noted that public hearing is a major concern for any new or expansion activity and asked for a comprehensive proposal. It held that in case the ministry of mines submits a detailed proposal including justification the matter can be further deliberated.

It also noted that there were litigations filed before the Supreme Court on the one-time capacity permissions issued in the coal mining.

Himachal Pradesh-based independent environment researcher Meenakshi Kapoor said non-coal minerals are found in diverse areas across the country. “For instance, several strategic and rare minerals are found in coastal areas while others like bauxite are in forest areas. Similarly, unsustainable sand mining is seriously harming river ecology. It seems that the MoEFCC is just a clearance house now. First, it was the coal ministry and now the mines ministry wants this exemption for the entire

mining sector. It is being forgotten that there is a 2009 advisory by the environment ministry to its expert appraisal committees that stated that the exemptions from the public hearing for expansion projects should be given judiciously and reasons be recorded. While reasons are recorded, good judgment is barely applied. This is simply bizarre,” Kapoor told Mongabay-India.

She emphasised that what needs to be understood is that there are serious impacts depending on the nature of mining projects. “For instance, look at Goa where excessive iron ore mining has triggered landslides and change in water drainage patterns in addition to extreme dust pollution. Moreover, such expansions, even if without any increase in pollution load [how will that be made possible is another matter!] and additional land takeover, cause a severe strain on existing natural resources and local ecology,” Kapoor said.

Tenders for nine iron ore and manganese blocks in Odisha likely in July

After the successful online auctions of 24 merchant mining blocks, the Odisha government is bracing for auctioning nine virgin mineral blocks.

A source close to the development said the state government is likely to issue Notice Inviting Tenders (NITs) in respect of the nine iron ore and manganese blocks in July this year. The blocks identified are Purheibahal, Chandiposhi, Rengalaberha North-East, Gandhalpada, Netrabandh Pahar (West), Dholtapahar, Jumka Pathriposhi, Unchabali and Kalimati.

Strikingly, the state mines department had made an abortive bid to auction both Chandiposhi and Purheibahal in May 2018- this preceded the online auctions of the merchant mine blocks. But a PIL filed in the Delhi High Court, contesting the participation of a bidder with more area under leasehold than what Rules permitted then had queered the pitch for auctions. The contentious provision that hobbled the road to auctions, stalling it for more than a year smoothened after the Centre finally revised the

cap on mine lease area (for Odisha) to 58 square kilometres (sq km).

It may be noted that online auctions of 24 merchant blocks with deposits of iron ore, manganese and chromite had witnessed frenetic bidding activity. Close to 300 bidders vied for these blocks. The premiums for these coveted resources were steep- on an average they stood at 104 per cent. Since these mines were already operative with available attendant infrastructure for unearthing and transporting ore, they evoked resounding response.

Moreover, the new leaseholders did not have to fret for clearances as the Centre by the dint of an Ordinance, had extended the validity of all key approvals, including the critical environment & forestry clearances by two years.

However, the bidding response to the ensuing virgin or freehold blocks is unlikely to be anywhere near the merchant mines auctioned before their lease tenures ceased on March 31, 2020. And, for virgin blocks, the lessees will be tasked with obtaining all necessary approvals before they can lay their hands on the untapped resources. Industry observers are also sceptical

on the timing of auctioning the virgin mines.

“In the backdrop of Coronavirus pandemic, the state government will struggle to get firm bidding interest for the virgin blocks. Players like Tata Steel and Rungta Mines who failed to garner a single resource at the previous round of auctions are likely to make some aggressive bids. Yet, the subdued market demand and the shadow of the pandemic will influence auctions outcome”, said a standalone miner.

Meanwhile, the merchant mines in Odisha are cruising to restart operations. The state government has issued vesting orders in favour of all successful bidders. Shortly, the new leaseholders would sign Mine Development & Production Agreements (MDPAs) and eventually, the lease deeds to keep the mines running again.

Since the ‘deemed clearances’ granted by the Centre are valid for two years from the date of expiry of lease validity, the new lessees will stick to the same technology and comply with the already prescribed mining plans of the Indian Bureau of Mines.

Two states, unused iron ore, a growing human crisis

Everyone in India has an answer as to why two Indian states are losing opportunities from rising global prices of iron ore. But no

one is offering any solutions to what was India’s biggest human crisis before Covid-19 turned the world upside down.

The two states are Goa and Karnataka. One

known for its pristine beaches, the other for its booming IT business. Both also produce

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ore, sorry they used to once. Not anymore. And now, they have somewhat similar problems revolving around the ban imposed by the Supreme Court and other regulatory bodies on iron ore mining. In Karnataka, mining was banned in 2011, in Goa the ban came in 2018.

Since then, the demand for resumption of mining has been growing in the two states. In a recent meeting with state chief minister Pramod Sawant, Goa governor Satya Pal Malik suggested resumption of mining at the earliest and asked Sawant to fast track the proposal before the central government for resumption of mining leases by way of legislative cure in the form of amendment to the mining laws, so as to get extension for leases upto 2037.

As many as 88 mining leases have been quashed by the Supreme Court, mining closed since February, 2018. If mining resumes, Goa will earn a whopping Rs 3500 crore.

Frustrated at the state of affairs in the Goa mining sector, representatives of 40 village Panchayats recently petitioned the state government and the Centre to take action against those not in favour of mining. In their petition, they argued that Goa's loss is someone's gain.

The biggest beneficiary of the Goa shutdown has been two Australian mining companies which have taken over the Goan orders and sending their low-grade iron ore to China. New Delhi's loss is Beijing's gain.

The Supreme Court move followed after Retired Justice Shah Commission said that illegal mining was spread over 550 hectares in Goa and caused a whopping loss of Rs 35,000 crores. Now, after many court cases, the actual loss is yet to be computed and the disputed area is not 550 hectares but just 5 hectares.

What is interesting is the country's apex court dismissed the Shah Commission findings and asked the state government to assess the losses. But there were an estimated 1,000 non governmental organisations (NGOs) which said they wanted a six member committee supervised by the country's apex court. The committee was formed and it said the issue of alleged illegal mining should be handled by the state government. The NGOs threw a spanner, saying they do not want the report, and the ban must stay

What is disturbing is that arguments no longer revolve around environmental damage but mining acts and tweaking of the

same as demanded by the miners and opposed by the NGOs, led by Goa Foundation. Equally important is the way the NGOs have lost their cases repeatedly, only to file similar appeals in other courts. "Liabilities are increasing by the day, soon there could be a social unrest," says Ambar Timblo, president, Goa Mineral Ore Exporters Association (GMOEA).

GMOEA wants urgent resumption of mining, judicious implementation of projects under funds collected and avoid the dump sale of iron ore which is actually impracticable because of market requirement of better quality ores. New Delhi (read the Centre) has not responded.

In Goa, an estimated 300,000 miners are without salaries ever since February 2018. In addition, another 100,000 involved in ancillary business have lost their jobs. Mining was the largest employment generator in Goa. Many argue mining has been banned not because of environmental or health concerns but because of the interpretation of the laws: Extension of leases has been disallowed without an alternative solution in mind.

Putti Gaonkar, a leader among the miners, says someone must find a way out of this mess. "We just do not know what to do," says Gaonkar, president of the Goa Rajya Kamgar Mahasang, a state level federation of 21 trade unions.

The state government is also in a mess. It has to rely on Sovereign Bond sale to meet its salary commitments to its employees. Shutting down of mining operations has caused a 40% slide in individual incomes, claim recent studies.

Before the first ban in 2012, mining contributed 25% to the state economy while effectively occupying only around 5% area in the state. After the ban, the contribution is less than 1%. Since mining was 100% export oriented, forex losses are significant, currently standing at a whopping \$10 billion. Supportive infrastructure has also suffered. As per current estimates, more than 12,000 trucks and 150 barges and ancillary units are at a standstill.

This is not all. There is a deathly silence on why Karnataka is losing a huge opportunity from rising global prices of iron ore?

Consider this. Global prices of iron ore have reached a seven month high due to strong demands from Chinese steel mills and top exporters like Brazil and Australia are unable to push supplies. But one of India's largest iron ore producing states is badly stuck.

Karnataka, which once produced one third of India's total production of 231 million tonnes, has lost the race to states like Odhisha which took the biggest chunk of India's iron ore production at 130.04 million tonnes, more than

half of India's total iron ore production. Chhattisgarh produced 35.72 million tonnes while Karnataka was at 29.87 million tonnes.

Unlike other states, Karnataka's problem is unique because it could not produce more because of a Supreme Court order, nor could it contribute to exports because of restrictions. As a result, the state remains totally cut off from the world markets.

The country's apex court has imposed restrictions on the state government to export ore from three iron ore rich districts. What is surprising is that on one hand, steel manufacturers are allowed to import iron ore despite ample supply of domestic resources. As a result, the miners are forced to sell only to the domestic steel manufacturers as per their terms of trade.

This is just one part of the problem.

The other issue revolves around steel players who, at any point of time, may discontinue purchase from domestic miners and resort to import. The miners say this is traditionally done to build pressure on the miners to reduce price even at a time when prices of iron ore are soaring in global markets.

Imagine the plight of the miners in Karnataka who are further compelled when PSUs like NMDC, the largest iron ore miner in India operating under the Ministry of Steel, reduce its prices by Rs 900 within a month's time. It slashed prices by Rs 500 per tonne in April 2020. A similar price reduction was done in May 2020 as NMDC again reduced prices by Rs 400 a tonne.

Now see the crisis.

Due to the steep reduction in prices by NMDC, other Karnataka miners were also forced to sell the iron ore at reduced prices because exports to the global market is no longer an option. This not only affects the average sale price captured in IBM index but also devalues the domestic ore. At the same time, steel plants continue to gain from artificially low prices of iron ore and rising prices of steel. Very few know the entire process of lowering prices also causes loss to the state exchequer which earns 30% in taxes and levies from the ore's sale value.

The issue is not triggering breaking headlines because the nation (read government) is busy saving the economy which has been battered beyond repair because of the lockdown triggered by COVID-19. Prime Minister Narendra Modi has urged India to become Atmanirbhar which translates into self-

reliant and imports. Even as industry experts work overtime to boost exports, Karnataka lies like a prostrate, disemboweled Gulliver. If the state was allowed to export iron ore, Karnataka would have been able to enhance its revenue.

Industry sources say Karnataka has a surplus of 12 million tonnes of iron ore. At the same time, steel mills imported a record 6.1 million tonne of ore during 2019. This is not a small amount, this is a little over 50% of India's total iron ore exports of 11 million tonnes. And see the net result, the unused stock resulted in a Rs 500 crore loss of royalty and tax revenues to the state exchequer.

Flip the pages and see what could have actually happened if the Supreme Court and other regulatory bodies had allowed iron ore exports. Karnataka miners would have derived the right price for their material and domestic prices hovered around the export parity. The value of the domestic consumption of state would have increased and the surplus iron ore would have been exported, adding around Rs. 3000 Crore to the state exchequer.

But it is not happening. Worse, the lower sale value also includes the lower premium earning on auctioned mines due to suppressed prices. The losses are putting pressure on the ecosystem and infrastructure the miners built. The big question now is: Will the surplus material be ever sold? Worse,

would it not create more bottlenecks for further production of mines?

So what exactly is happening in Karnataka? The state imposed export restriction, Supreme Court-imposed E-auctions and production level cap of iron ore in the state coupled with artificially suppressed prices has deprived miners from their right of free trade. In these e-auctions, in absence of any traders (as per rules), a state of monopoly has emerged where the only integrated steel plant has the advantage and to large extent artificially suppress the price.

Isn't it gross unfair? Let us remember that the Supreme Court ban in July 2010 was imposed in the state due the conditions prevalent during 2011-12. But now, the state government should now take charge of the sector and push it on par with other states where there is no such restriction and the trade is market driven, transparent and growth based.

In the mining industry, miners generally sign time bound contracts with end users or traders at bilaterally negotiated prices. Since the market is competitive, both from domestic sources and imports, hence there is no room for miners to overcharge the steel mills. There is another advantage, these contracts also provide certainty to both – the producers and end users. It also helps plan up the investment. But it has not happened, the Karnataka's steel industry continues to reap windfall benefits because of the ban on sale of state's iron ore outside

Karnataka and the mining companies remain pushed to a corner.

And this is happening when there has been serious disruption of Iron Ore exports, especially from some of the world's top major suppliers.

There is a strong demand for steel mills across the world (including China) and the demand for raw material has gone up, global iron ore prices touching seven months high. Futures for iron-ore with 62% iron content jumped 10% to nearly \$107 per tonne (highest in China's Dalian Commodity Exchange since October 2019). In the wake of weak domestic demand India too had exported a total of 23 MT of ore & pellets from Dec 19 to May 20. Major iron ore rich states like Odisha contributed to the rise in export of iron ore from India even at a time during April 2020 when there was a huge dip in export from other sectors owing to the lockdown.

A study by Care ratings noted that outbound iron ore shipments rose 17.5% during April 2020. Unlike other states in India, Karnataka could not contribute to the iron ore export as it is totally cut off from the world markets due to restrictions in exports of iron ore prevalent in the state.

Is someone listening in New Delhi? Probably not.

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