

POLICY BRIEF

THE MINES AND MINERALS (DEVELOPMENT & REGULATION) AMENDMENT ORDINANCE, 2015

Promoting short-term growth over long-term sustainability of the mining sector

- ☐ Will not lead to any significant improvement in mining governance
- ☐ Will restrict investment, innovation and best practices
- ☐ Will lead to reckless mining and poor environmental practices
- ☐ Will exacerbate conflicts and alienate local communities further

INTRODUCTION

On January 12, 2015, President Pranab Mukherjee signed an ordinance to amend the Mines and Minerals (Development and Regulation) Act (MMDR Act), 1957. The issues warranting such immediate action and the promulgation of the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015, as identified by the Ministry of Mines, include a “substantial decrease” in the number of new mine leases, problems in the renewal of mining leases following Court judgements, and significant reduction in the output of the mining sector.

On January 13, the mines ministry put out a release outlining the major challenges facing the mining sector that the Ordinance intends to address. These include discretion, non-transparency and delay in the grant of mineral concessions, the problems in the second and subsequent renewals of mining leases, illegal mining activities, issues with exploration and investment in the sector, and the grievance of civil society that the mining-affected people are not cared for.

Though the observations are pertinent, the solutions proposed by the Ordinance are not. It fails to address most of the challenges facing the mining sector. As a matter of fact, it could worsen many problems plaguing the sector.

A coal mine in Hazaribagh, Jharkhand



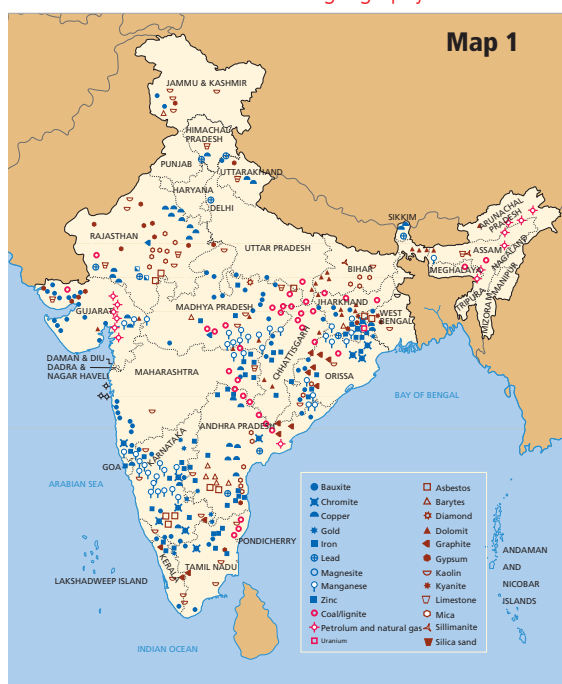
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ISSUES AND CHALLENGES FACING THE MINING SECTOR IN INDIA

- **Plagued by poor regulations, weak institutions, inadequate monitoring and feeble enforcement:** Regulatory loopholes abound in the mining sector, allowing mining companies to get away with practices which should be illegal. Most institutions related to mining, including those responsible for monitoring, are weak, do not have the capacity to perform to their potential, and are marred by governance failures. The enforcement of laws and regulations is notable only for its feebleness.
- **Mine allocation suffers from non-transparency and arbitrariness:** This was made amply clear during the coal scam; the Supreme Court, in its judgement of August 2014, declared that all the 218 coal blocks allocated between 1993 and 2010 are illegal as they have been allotted in an “ad hoc and casual” manner by the Central government. This adhocism is true for all minerals.
- **The current mechanism of royalty and taxes fails to equitably distribute the windfall profits made by companies:** A clear example of how easily windfall profits are siphoned off by companies, leaving state governments and the mining-affected communities high and dry, is the peak of iron ore mining between 2004 and 2010, when royalty for the ore was between Rs 16 and Rs 27 per tonne, while it was being sold for as high as Rs 4,000 per tonne.
- **Suffers from low investment in exploration, development of technology and implementation of best practices:** The exploration of new minerals, particularly deep-seated strategic minerals, the development of new technology, and the implementation of the best mining practices are critically neglected areas in the country’s mining policy and investment budget.
- **The legacy of captive mines:** Captive mines continue to exist because of the assumption that they lower costs of goods and services in the country. The opposite is true. Today, companies with captive iron ore and coal mines sell their products in the same market as companies which buy these raw materials from the open market. Captive mines, therefore, distort the market. The humongous corruption in the allocation of captive mines and the subsequent illegalities also demonstrate the huge rent-seeking potential in the allocation of captive mines.
- **Most mining districts in the country are also the poorest:** The mines ministry’s Sustainable Development Framework (SDF) report of 2011 acknowledged the fact that “in recent decades, mining activities have resulted in little local benefit”. (See Figure on pg3)
- **Has one of the poorest environment performance:** Most mining areas suffer from devastating environmental degradation and high levels of pollution. Many coal mining districts of the country were identified as critically polluted areas by the Central Pollution Control Board.
- **The legacy of abandoned mines:** The number of abandoned mines, or mines without proper closure, is perilously high in India. Over the past decade, efforts have been made to strengthen regulations on mine rehabilitation and closure but the situation on the ground is still far from satisfactory.

Mineral resources textbook geography



Watersheds a geography of flow



Leftover forests a geography of fraught abundance



Poorest 200 districts a geography of poverty

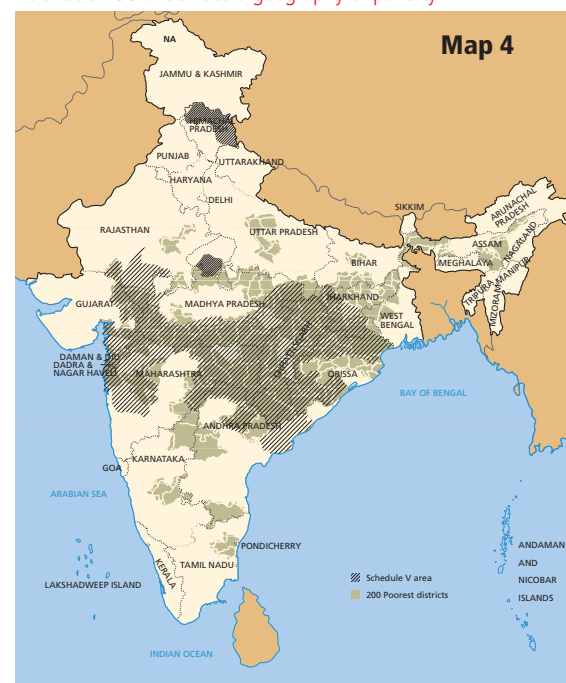


Figure: Resource Rich or Cartographic Disaster? The many social, environmental and ecological conundrums of India's mining assets.

81.5 Percentage of major mineral mines in violation of statutory requirements in 2013-14

186,000 Hectares of forestland cleared for mining since 1981

70 Percentage of country's coal, iron ore and bauxite found in top mining states of Chhattisgarh, Jharkhand & Odisha

40 Percentage of people below poverty line in the top mining states; the national average is 21.92 per cent



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THE ORDINANCE AND ITS IMPLICATIONS

For nearly a decade, the country has debated the need to amend the MMDR Act. The conversation, which started around 2005, intensified with the publication of the report of the High Level (Hoda) Committee on National Mineral Policy (2006) set up by the Planning Commission. Subsequently, Centre for Science and Environment (CSE) published its report (*Rich Lands, Poor People: Is 'Sustainable' Mining Possible?*) in 2008, starting a debate within the civil society on the need to bring major changes in the mining governance of the country. This report illustrated the ironic dichotomy in mining wherein the poorest people live on the richest land. Discussions between stakeholders were held across the country, resulting in the drafting of the Mines and Minerals (Development and Regulation) Bill (MMDR Bill), 2011. The Bill provided for reforms in the regulatory framework and the governance of the mining sector. Introduced in the parliament in November 2011, the Bill unfortunately lapsed in February 2014, given the UPA government's failure to table it in the 15th Lok Sabha. Further, in a bid to position the sector in the overarching framework of sustainability, considering economic, environmental and social aspects, a Sustainable Development Framework for mining in India was developed in 2011 by the Ministry of Mines, envisioning mining that will be "financially viable; socially responsible; environmentally, technically and scientifically sound; with a long term view of development; uses mineral resources optimally; and ensures sustainable post-closure land uses".

How far does the Ordinance go in addressing this vision?

1. Poorly addresses the issue of better governance and regulations in the mining sector

- There is a serious lack of capacity within the government, at all levels, for assessment of mineral resources, development of mining plans, and monitoring and enforcement of mining regulations. This is the prime reason for the huge gap between the mining regulations and their implementation, and has led to large-scale irregularities in the mining sector. An instance of deficit in the capacity for monitoring by the Indian Bureau of Mines (IBM) was noted in the SDF report: "[E]ach operating mine can be visited no more than once a year by the Indian Bureau of Mines". There is, therefore, a major need to build capacity and reform the institutions for implementation of laws and regulations and better mineral development.
- Since the publication of the Hoda Committee report, a lot of work has been carried out within and outside the government in designing an appropriate institutional framework for the mining sector. Many of these suggestions were incorporated into the MMDR Bill, 2011.
- There is a consensus that we need a technically and scientifically competent body at the state and the Central level for regulating the mining sector – the existing institutions have been found wanting. There is also a consensus about mining tribunals at both the national as well as the state level to ensure transparency in allocation of mining concessions. Moreover, there is a need to set up special courts at the local level to deal with egregious violations under the mining laws.
- Similarly, there is an agreement on reforming the institutions related to the environment and safety management in the mines. Currently, four regulatory institutions govern the environment, health and

The ironic dichotomy of the poorest living in districts richest in minerals must be addressed by re-writing the environmental and social contract

Auctioning is not a substitute to but a part of the larger reform in governance. The government must aim at a holistic new regulatory framework

safety aspects of mining. The Union Ministry of Environment, Forest and Climate Change (MoEF&CC) is responsible for giving environmental and forest clearances, the IBM clears mining and Environment Management Plans (EMPs) – the MoEF&CC can also clear EMPs – State Pollution Control Boards are responsible for giving Consent To Establish and Consent To Operate under the Water and the Air Acts, and the Directorate General of Mines Safety is responsible for monitoring the health and safety of workers. There is a lot of overlap in the responsibilities of these institutions, with each having very little capacity to monitor and enforce the law. Strengthening these institutions was high on the agenda of reform.

- The MMDR Ordinance has failed to take into consideration the need for deep reforms to improve governance in the mining sector. The major reforms proposed under the Ordinance with regard to governance are: first, the introduction of an auction mechanism for allocating mining concessions as outlined in Sections 10B and 11; second, provisions for timely decisions as emphasised in Sections 4A and 30(b); third, increasing penalty for violations under the Act, specified in Section 21(1) and (2); and, fourth, creating special courts specified under Sections 30B and C, to adjudicate and offer speedy trial on mining offences under the Act.
- These provisions however do not go far enough in solving some of the fundamental problems concerning mining governance. Even the main thrust on auctioning as a tool for improved governance will require strong and scientifically competent institutions. In the absence of such institutions, auctioning might create more problems of accountability and poor mining practices. Auctioning, therefore, is not a substitute to but a part of the larger reform in governance. The Ordinance fails to recognise this simple fact.
- Simply increasing penalty for violation within the existing institutional framework might make rent-seeking behaviour more lucrative than before.

2. Not a win-win proposal for the mining sector

- Ironically, the Ordinance, focused on shoring up mining activities, will hurt the mining sector itself in the long-run by limiting investment and innovation.
- The long-term growth of the mining sector is dependent on exploration. Advanced technology and best practices need to be adopted to ensure optimum exploration. Investment is needed to achieve this goal.
- The Ordinance discourages private investment and risk capital in reconnaissance/regional exploration. On the one hand, it promotes “open sky” policy for reconnaissance by granting non-exclusive permits, on the other hand it does not guarantee any return to the investors. This issue was discussed in detail in the Hoda



Committee report and the general consensus was that though no guarantee can be given for prospecting licences, the globally accepted “first-in-time” principle must be adhered to. This will incentivise investment in high-tech reconnaissance, which is urgently needed in India for deep-seated strategic minerals.

- The Ordinance has proposed, under Section 9C, setting up of an exploration trust – National Mineral Exploration Trust. The funds for the trust will be generated from the royalty paid by lease holders – a sum equivalent to two per cent of the royalty paid. This is at best going to be a very limited fund, not likely to grow to more than Rs 500 crore or about 90 million dollars in next five years, even with the expected accelerated growth in the mining sector. It will not be sufficient for exploration of strategic minerals needed for new developments in electronics, renewable energy and advanced energy storage. Australia, with a similar potential of mineralisation, has an exploration budget of about three billion dollars, as per 2013 estimates.
- This money will largely be used by government institutions for exploration. However, the performance of these institutions in exploration has not been up to the mark in the past. The Hoda Committee report specifically noted that “due to lack of resources in terms of manpower, equipment, and technology, the Geological Survey of India has not been able to do either extensive or intensive regional exploration for most minerals other than coal”. It further noted that “with limited exploration, quantification of any significance has not been possible”.
- Limiting the scope of exploration will also aid cherry-picking of minerals by companies, hurting the overall development of the mining sector. While mineral deposits close to the surface, such as bulk minerals like iron ore, bauxite and limestone, will continue to be the low-hanging fruit for the mining companies, extensive deposits of many important deep-seated minerals, such as base metals, noble metals, rare earths etc., will remain unexplored.
- We, thus, need to promote public sector exploration but it should not mean that the huge risk capital that can come from private sector should be discouraged. While public sector exploration needs to be strengthened by making use of state-of-the-art technology, much of the investment needed for exploration and mining would have to come from the private sector. To realise this, the regulatory regime must be strengthened to ensure fair play, clarity of processes and security of investments.

3. Auctioning cannot be a one-size-fits-all solution

- The Ordinance creates a blanket paradigm for granting all types of mineral concessions through auctioning. Sections 10B and 11 introduce the provision of auction for the grant of mining leases and the grant of prospecting-cum-mining leases by a method of competitive bidding, including e-auction, excluding coal, lignite and atomic minerals. Section 10B outlines the details for notified minerals – bauxite, iron ore, limestone and manganese ore according to the Fourth Schedule of the Ordinance – and Section 11 for non-notified minerals.

Public sector exploration needs to be promoted, but the huge risk capital coming from the private sector must not be discouraged

We must develop regional mining plans taking into consideration the cumulative environmental and social impact

- Auctioning is the best way to allocate mining concessions where the deposits can be accurately established and a proper valuation can be done. This will capture the windfall profits as well as bring transparency in the allocation of concessions. However, in cases where mineralisation is not properly established, auctioning can lead to problems including undervaluation of minerals, in which case it would lower revenue for the government, or overvaluation, resulting in the inability of the concession-holder to meet commitments. This is also a sure invitation for rent-seeking.
 - This problem will surface during the auction of the prospecting-cum-mining leases. The Hoda Committee had pointed out that “prospecting is a high-risk venture in as much as the prospecting agency has to spend considerable amounts on activities that may or may not result in finds of commercially exploitable deposits”. Therefore, if competitive bidding is to be done for prospecting-cum-mining leases, it can only be done in the case of bulk minerals, where the mineral deposits are more uniform and predictable, and where substantial work may have been done by state agencies.
 - For deep-seated minerals, the “first-in-time” principle is the most certain way of granting mineral concessions. Given the high-risk nature of exploring and prospecting these minerals, requiring highly specialised human and technical resources, private players should be encouraged to venture in the exploration of these high-risk-high reward minerals.
 - The criteria for selecting and evaluating companies through bidding can be discretionary if the conditions of bidding are not structured appropriately. Social and environmental safeguards should be made an integral part of the bidding proposal, and form a basis for the evaluation. Also, technical evaluation should be done separately from financial evaluation to ensure the viability of a project. Finally, all information related to bidding must be put in the public domain to increase accountability.
- 4. Prefers revenue maximisation over safeguards in mining**
- The objective of the Ordinance is to get more revenue for the state governments through auctioning of mineral concessions. This is a fair objective, but needs to be strictly moderated to discourage mining in ecologically fragile and socially sensitive areas.
 - The geographic spread of mineral deposits in India includes many ecologically fragile areas (*see Map 1 & Map 2*). A major share of India’s coal, iron ore, bauxite, manganese and chromite deposits are in the dense forests of Chhattisgarh, Jharkhand and Odisha; bauxite deposits are abundant in the hilltops of east coast states such as Odisha; iron ore, manganese and laterite deposits lay embedded in the Western Ghats (*see Map 3*).



- Compounding the mining-ecology equation are the concerns of the country's tribal population. India is home to about 104.3 million tribal people; 8.6 per cent of the country's total population. Nearly 90 per cent of this tribal population lives in rural areas, often covered by forestlands with rich mineral reserves.
- Though there is a mention of the implementation of SDF for mining in Section 20A, and the powers of revision vesting with the Central government to direct states on social and environmental issues related to mining (which itself is problematic, as explained later), but without adequate safeguards the objective of maximisation of revenue might lead to more social and environmental conflicts.
- It is also important to remember that the effect of mining on ecology is far-reaching and long-term. Therefore, regional/cumulative impact assessments should be an important tool in deciding the extent and method of mining that can be allowed. In fact, we must develop regional mining plans by taking into consideration the cumulative environmental and social impact.

5. Promotes poor mining and environmental practices

- The Ordinance, under Section 8A, specifies that all mining leases shall now be granted for a period of 50 years, with no renewals. The mine lease period for existing mines has also been extended to 50 years and mines on which leases were to expire soon can now operate till 2020 and 2030 for non-captive and captive mines respectively. After the expiry of the leases, the mines will be re-auctioned.
- Given the poor assessment and monitoring of mines in India, renewal of leases was the only time when there was an opportunity to assess the performance of mines, with respect to productivity and environmental impact. A long lease period, without any provision for periodic audit, means that regulatory supervision will be further downgraded. A mechanism must be put in place to ensure an intermittent assessment of a mine's performance.
- The extension of the lease period will also benefit some of the most egregious mines which have very poor environmental and social performance.
- The most alarming aspect of allowing mines to operate for 50 years, which can be subsequently re-auctioned (without provision for periodic audit), is that mine closure will not be done properly.
- The matter is of serious concern because environmental management of mines largely relates to how the mine is progressively closed and rehabilitated and what is the final closure and land-use plan. Under the new regime, mines can operate for 50 years, so there will be little incentive for mining companies to invest in progressive mine closure. The long duration of the lease will also make it difficult to estimate and establish appropriate financial guarantee to ensure that mine closure will happen.
- This is hugely problematic as the past practice of "dig and run"

Eschewing a proper monitoring scheme, the Ordinance will foster poor mine closure practices

Strengthening of regulatory institutions is required to address illegal mining, not just end-of-pipe solutions by increasing penalty

and orphaned mines will again become a norm. Already, there are far too many abandoned mines in the country. As per IBM estimates of 2010, there are 297 abandoned mines of major minerals. This is not including the abandoned coal mines, which, according to an analysis by CSE, number at least 240. It is pertinent to mention here that on December 15, 2014, in response to a question in the Lok Sabha, the Ministry of Mines tendered that as of April 2014, the number of non-working mines in the country was 5,028. Surprisingly, the ministry submitted that there is no “separate classification” of abandoned or sick mines.

6. Does little to control illegal mining as the root causes remain unaddressed

- In the past decade, India’s mining sector has been marred by countless controversies, including over-extraction of mineral ore, especially from float ore deposits; illegal selling, export and transportation of ore; removal of ore from overburden dumps and selling them without state approval; mining outside the lease area; unscientific and unregulated practices in small-scale mines; and carrying out mining in officially closed mines.
- The Ordinance contains no provisions to deal with many of these crucial issues, forming as they do the crux of illegal mining.
- Instead, it proposes a two-tier approach to deal with the problem of illegal mining. First, increase in penalty for violations under the MMDR Act, as specified in Section 21(1) and (2); and second, creation of special courts as specified under Section 30B and C, to adjudicate and offer a speedy trial on mining offences under the Act.
- In effect, the Ordinance proposes an end-of-pipe solution to address the problems of illegal mining, instead of providing for the strengthening of institutions involved in the management and monitoring of mining.

7. Promotes inefficient captive mining, which distorts the market

- The Ordinance also promotes captive mining by extending the lease period for captive mines till March 2030, or for a period of 50 years from the date when the lease was granted, whichever among the two is later, as specified under Section 8A(5).
- This will hugely benefit more than 50-year-old mines that have done little to close their mines.
- However, there is repeated evidence of the arbitrariness and the inefficiency captive mining entails. The Supreme Court, in its judgement on the coal scam in 2014, had noted that the way in which coal blocks were allocated to private parties for captive mining was highly non-transparent and ad hoc, due to which “common good and public interest suffered heavily”.



- Captive mining also disincentivises the efficient use of mineral resources by the end-user and encourages poor mining practices. An analysis of the steel sector by CSE in 2012 brought out the poor environmental performance of steel plants with captive iron ore and coal mines. The performance of these plants was found to be far worse than the ones that did not rely on captive sources of raw material, despite the fact that captive plants recorded higher profit margins due to the availability of cheaper raw material. The fact is that companies acquiring raw material and energy from the open market at a higher cost have innovated in technology to improve efficiency, while those with captive iron ore and coal mines do not have any incentive to do so.
- Similarly, CSE's analysis of the cement sector in 2005 showed that the sector's poor environmental performance can be largely attributed to the way it sources its raw material, which is limestone. Since all limestone for the cement industry is sourced from captive mines, the industry has been reluctant to invest in proper mine management. Our poor mining regulations and governing agencies have aided such practices.
- Given the inefficiency and non-transparency in the functioning of captive mines, we should move away from captive mining. New allocations of mine leases should be made through open auction after proper exploration of mineral resources.

8. Very weak on sharing of mineral wealth with mining-affected communities

- The sharing of the wealth accrued from mining activities is extremely important, given the fact that India's most mineral rich states and districts have high levels of poverty (*see Map 4*). Windfall profits must benefit local communities. The SDF emphasised the need for "community engagement, benefit sharing and contribution to socio-economic development" to address the "historical hurt" that has been inflicted upon these communities.
- However, the issue of peoples' participation in mining has been poorly addressed in the Ordinance. There is also a huge roll-back on the benefit-sharing provisions that were proposed in the MMDR Bill, 2011.
- Section 9B of the Ordinance provides for the establishment of District Mineral Foundations (DMFs) by state governments in mining districts. A DMF will be the nodal authority entrusted with the day-to-day matters of benefit-sharing. Holders of mining leases or prospecting licence-cum-mining leases are required to pay the DMF "not exceeding one-third of the royalty rates" of the respective minerals, in addition to the royalty paid to the state.
- The lapsed MMDR Bill had provisions for addressing the sharing of mining profits with affected communities. The Bill, under Section 43(2), had specified that for major minerals the holder of a mining lease shall pay the DMF "an amount equivalent to the royalty paid during the financial year" annually. For coal and lignite, it was to be an amount equal to 26 per cent of the profit after tax.

New mine leases should be granted by open auction instead of promoting captive mines

Accrued benefits of mining must be shared equitably with the communities to alleviate resource curse

- The reason for including the “equivalent” royalty provision was that the people of a mining area are equal stakeholders in the mining activities in the area, and have as much right to benefit from the profits of mineral extraction as enjoyed by the mining companies or the government. The Ordinance now considerably dilutes such equal rights.
- The reduced percentage will also lead to significant reduction in the amount of money that will be available for the mining-affected communities.¹
- The DMF has also been made ineffective under the new Ordinance. There is no certainty on how much money will come in, and no clarity on how and where it will be used. Without any such clarity, the DMF money can, in fact, be used to divide society and create more tensions within communities.
- On the other hand, the lapsed MMDR Bill, under Sections 56 and 57, had detailed out the structure and role of the DMF. This included the provision for setting up of a governing council chaired by the District Magistrate to oversee fund utilisation and management by the DMF, as specified under Section 57(2) of the Bill. It also specified, in Section 57(4), that the DMF maintain a register containing information of leaseholders, the annual payments they receive and how the money has been utilised. Section 56(5) provided for the maintenance of a register by the state government to record the financial undertakings of the DMFs. All such information was to be placed in the public domain.
- The 2011 Bill also specified that monetary benefits will be provided to affected persons on a monthly or quarterly basis, depending on the nature in, and the extent to, which they are affected. Some money obtained through this process was also to be used in supporting local infrastructure. To maintain transparency in fund disbursement by the DMF, a periodic audit of the DMF would be done by the state government in consultation with the Comptroller and Auditor General of India.
- The mechanism of fund disbursement by the DMF needs to be clearly laid out. The funds accrued must contribute to the long-term social and economic development of the communities affected by mining, in line with the vision of the SDF.

¹A back of the envelope calculation to estimate what this translates into for the community suggests that even under best-case scenario, there will be a reduction of 20 per cent in the funds available under the Ordinance, as compared to those available under the provisions of the MMDR Bill, 2011. With the revision of royalty rates for major minerals in 2014, it is estimated that revenue from royalties will go up to Rs 13,274 crore. Additionally, according to the coal ministry, a latest estimate of royalty collection is about Rs 11,687.05 crore for the period January 2013 – March 2014. Therefore, the total royalty accrued yearly from coal, lignite and major minerals combined may be estimated to be about Rs 24,961 crore. This implies that the maximum money that can be available for the community will be about Rs. 8,320 crore. This is far worse than the scenario that was proposed under the 2011 Bill. The suggested profit-sharing provision would have generated at least Rs. 10,500 crore every year as share of profits for affected communities according to CSE’s 2011 study.



9. Large mining areas will mean more displacement

- The MMDR Act, Section 6(1)(b), gives the Central government the power to extend a mine lease to an area of more than 10 square kilometres in the interest of development of any mineral. The Ordinance extends this discretionary power to the development of any industry.
- With no specification on the extent to which the area can be extended in the interest of the industry, large areas can now be leased out to cater to industrial demands.
- Increase in the size of mining areas will mean more displacement, which is already significant. An analysis by CSE, based on environmental clearances given for various mining categories, shows that since the beginning of the 11th Five Year Plan in 2007, the area leased out for various mining activities can potentially displace more than eight lakh people. This is still a gross underestimation, as displacement-related information is not available for many projects.

10. Alienates local communities further

- The “relationship between mining companies and local communities has a legacy of abuse and distrust”. This fact was underscored in the Hoda Committee report. The distrust and anger of the dispossessed is evident in the uprisings in the forested and economically backward mining areas of Chhattisgarh, Jharkhand, Odisha and Andhra Pradesh.
- The Ordinance, alongwith changes that are being proposed with respect to mechanisms of green clearances, land acquisition and dilution of provisions for settlement of rights under the Forest Rights Act, 2006, will further alienate local communities, fuelling more social unrest.
- The recent report of the Union environment ministry’s High Level (Subramanian) Committee of November, 2014, has already recommended the need for developing a special mechanism “to speedily deal with environmental approvals” for mining projects. The Committee has also prescribed that only “genuine local participation” will be permitted during public hearings. The prescriptions, read together, create an excuse to pay even less attention to concerns of the mining-affected people and dilute the process of public consultation.
- The trend is evident in the dilution of public hearing provisions for various development projects, especially coal mining. Office memorandums (OM) passed by the MoEF&CC in recent years have allowed progressive exemption of larger and larger coal mining projects from public hearing while seeking environmental clearance for one-time capacity expansion. In December 2012, coal mines seeking an expansion of up to two million tonnes per annum (MTPA) of production capacity were exempted from public hearing. Four successive OM’s issued between January and September 2014 have increased the ceiling to six MTPA. Simultaneously, the existing production capacities of coal mines, based on which expansion is

Along with changes in land acquisition and environmental clearance policies, poor emphasis on peoples’ participation will further alienate communities

Cooperative federalism, as propounded by the Prime Minister and the Niti Aayog to ensure good governance, is subverted by the Ordinance

sought, have also been increased, from up to eight MTPA in January to more than 20 MTPA in September.

■ The exclusion is further reinforced by the proposed Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014. The Ordinance, under Chapter IIIA, Section 10A, exempts land acquisition for infrastructure projects from public hearing. This includes mining projects as the parent Act, in Section 2(1), categorises mining under infrastructure projects. It needs to be noted here that Section 5 of the parent Act required public hearing to take place during the phase of Social Impact Assessment. The Act had also specified (Section 2) that at the initial stage, for private companies to acquire land for public-private projects, a 70 per cent consent of affected families will be required, while for stand-alone private projects, 80 per cent consent will be required. This is no longer the case for projects that fall under Section 10A (which includes mining).

- In effect, this means that neither are the benefits from mining going to be shared adequately with affected people, nor will they be asked before their lands are acquired for mining activities. Mining will happen *fait accompli*.
- Free, Prior and Informed Consent (FPIC) is a principle that all indigenous people have a right to consent about proposed development projects and all other activities affecting their land and territories. It will be severely undermined by the Ordinance. The principle is recognised under the United Nations Declaration on the Rights of Indigenous Peoples (2007), several international organisations and a few governments as well. It should be made mandatory in India. Public consultation must not be restricted, but should be strengthened to ensure democratic decision-making.

11. Undermines cooperative federalism

- Instead of strengthening institutions and improving governance and regulations at the state level, the Ordinance allows huge scope for interference by the Central government.
- As specified under Sections 10B and 11, the bidding parameters as well as the terms and conditions for auctioning of mine leases and prospecting-cum-mining leases are to be determined by the Central government. Therefore, though the state will be giving out the leases, the Centre can effectively dictate the process by setting the rules for auction.
- The Centre will now also have the power to give directions to the state governments, as outlined under Section 20A, for implementation of various provisions of the MMDR Act. This is in addition to the power of the Central government to revise any order passed by the state with respect to all minerals other than minor minerals, as specified under Section 30 of the Act.



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An iron ore mining site
in Bellary, Karnataka

- The concept of “arm’s length” has thus been subverted. Moreover, with the Central government having such over-riding powers, the states no longer remain equal stakeholders in the exercise of mining governance, which completely undermines the spirit of “co-operative federalism”, an idea propounded by the Prime Minister, and now the Niti Aayog, to ensure good governance.

Overall, with a clear focus on boosting growth in the mining sector in the short-term, the Ordinance seriously undermines many issues that are critical in ensuring long-term development. While the environmental and social concerns come out as marginal issues in the various provisions that have been proposed, the Ordinance also creates uncertainty in the industries’ future itself.

There is no doubt that our existing regulations and institutions need reform to deliver better results on the ground. We need a new law and a reformed regulatory mechanism. However, the Act must be formulated not only as a mechanism for aiding mining, but also as a cornerstone legislation that will ensure a sustainable mining future; balancing the needs of the people, the environment and the economy.

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