

Note on the Evolution of India's Mineral Policy and its Impact on the Mineral Industry

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Preamble

The evolution of India's Mineral Policy started with the Mineral Policy Conference held in 1947. This resulted in the enactment of the Mines and Minerals (Regulation and Development) Act, 1948, the first legal framework in independent India for the regulation and development of mines. The other major outcome was the establishment of the Indian Bureau of Mines (IBM), also in 1948, as the main regulatory agency for monitoring and supervising mining activity in the country with particular emphasis on conservation. The adoption of the Constitution of India on 26th January 1950, defining the legislative powers of the Union and the State Governments was to have a major impact on the mineral policy. The Seventh Schedule of the Constitution, under Entry 54 of List I empowered the Central Government to regulate mining activities and development of minerals while Entry 23 of List II empowered the State Government with powers subject to List I.

Evolution of India's Mineral Policy

The Industrial Policy Resolution, 1956 (IPR) put major minerals such as coal, lignite, mineral oil, iron ore, copper, atomic minerals etc, in Schedule A, which was reserved exclusively for the public sector and minor minerals in Schedule B, in which the private sector was allowed to participate along with the public sector. In pursuance of the IPR, the Parliament enacted the Mines and Minerals (Regulation and Development) Act, 1957 [MMRD Act] applicable to all minerals except mineral oil. Mineral Concession Rules (MCR) and Mineral Conservation and Development Rules (MCDR) were framed under the Act. MCR deals with major minerals but the State governments are free to frame their own rules for mineral concessions with respect to minor minerals. Accordingly, most States have framed their own Minor Mineral Concession Rules.

Evolution of the MMRD Act

The first amendment of the MMRD Act was made in 1972, enhancing government

control through such measures as premature termination of mining leases (ML), lowering of ceiling on individual holdings, for the Central Government to undertake prospecting and mining in certain areas, removal of ceiling on royalty. The next amendment made in 1986 was even more regressive. First schedule minerals for the mining of which, prior approval of the Central Government had to be obtained, were increased from 27 to 38, the Central Government was authorised to reserve areas for Public Sector Undertakings (PSU's) and approval of mining plan was made mandatory. The MCDR was revised in 1988 to enable IBM to monitor and regulate all mining activities.

Economic Liberalisation

In 1991, Dr. Manmohan Singh, the then Finance Minister, with the full backing of the Prime Minister, Sri P.V. Narasimha Rao, introduced economic liberalisation. By then, it had been realised that the mantra of "Commanding heights" for the public sector was not delivering the desired results. A Comprehensive National Mineral Policy (NMP) was announced in March 1993. The Policy, for the first time, introduced the idea of encouraging private investment in exploration and mining. Thirteen major minerals – iron ore, manganese ore, chrome ore, sulphur, gold, diamond, copper, lead, zinc, molybdenum, tungsten, nickel and platinum group of minerals – hitherto reserved exclusively for the public sector were opened up to the private sector. Induction of foreign participation and technology in exploration and mining was encouraged and foreign equity investment in Joint Ventures (JV's) promoted by Indian companies was allowed. Foreign equity was limited to 50% but the government announced its intention to consider upward revision on a case-by-case basis.

Amendments to MMRD Act, MCR and MCDR

Consequent to the introduction of the NMP, the MMRD Act was amended in 1994 and soon thereafter the MCR and MCDR.

The concept of Large Area Prospecting Licence (LAPL) was introduced, mainly to attract foreign direct investment (FDI). For facilitating aerial prospecting, the area for a single PL was enhanced from 25 sq km to 5000 sq km. A scheme of gradual relinquishment in a time bound frame work was introduced whereby the area for detailed exploration was to be narrowed down to 25 sq km at the end of the third year.

Despite this, prospecting and mining activity failed to pick up. Consequently, the Ministry of Mines in February 1997, constituted a committee headed by the Additional Secretary, Ministry of Mines to go into the reasons thereof. The Committee in its report submitted in January 1998 suggested wide ranging amendments to the Act. Accordingly, the Act was amended in December 1999 followed by the MCR and MCDR in January 2000. In view of the major change in perspective, the Act was renamed as Mines and Minerals (Development and Regulation) Act, 1957 [MMDR Act] to stress the primacy of development over regulation.

The major amendments carried out in the MMDR Act, 1957 were Introduction of the concept of reconnaissance operations as a distinct stage prior to prospecting, and replacement of LAPL by the instrument of RP; RP holder to progressively relinquish the area down to 1000 sq km or 50 per cent of the area granted, whichever was less, at the end of two years and to 25 sq km at the end of three years; RP holder to get priority in the grant of PLs within reconnaissance areas subject to certain conditions; minerals listed in the First Schedule requiring prior approval of the Centre were brought down from 11 to 10; Delegation of power to State governments to renew lapsed PLs/MLs; to grant RP/PL/ML for areas that were not compact or contiguous; to transfer MLs in respect of minerals under Part C of the First Schedule; to permit amalgamation of two or more adjoining MLs; Liberalisation of area restrictions of RP/PL/ML by making such restrictions applicable state-wise; In the case of large mining operations, the ML would not lapse if mine development did

not take place in a period of two years. The major changes carried out in the Mineral Concession Rules, 1960 were to delete Agency System under Rule 75(2) of MCR; State governments could undertake prospecting or mining operations after notification of areas; deletion of charging of premium by government companies in case of transfer of ML to a private venture.

Under Mineral Conservation and Development Rules, 1988: State governments would approve mining plan in respect of 29 non-metallic/industrial minerals for open cast mines (the remaining being retained with IBM); Once approved, mining plan would be valid for the entire duration of the ML; Relevant modifications, such as mining plan and mine closure plan, were made to take account of the qualitatively different impact on environment due to prospecting operations as compared to that of mining operations; In addition to the tentative scheme of mining plan for the first five years of the ML, an annual programme from year to year for five years would also be submitted.

Thus, after the Act was promulgated in 1948, the Act was amended four times, i.e. in 1972, 1986, 1994, and 1999, and after each amendment corresponding changes were carried out in the two Rules, viz. MCR and MCDR. While the first two amendments increased government control, the last two relaxed them. The changes in the regulatory dispensation in 1994 and 1999 envisaged considerable devolution of authority from the Centre to the States.

National Mineral Policy 2008

By now it was becoming clear that India was not attractive to investors and entrepreneurs as far as the mineral sector was concerned. The government of India therefore, constituted a High Level Committee with Mr Anwarul Hoda, Member, Planning Commission as Chairman in September 2005. After wide ranging discussions, the committee which came to be known as Hoda Committee made its recommendations which was released to the public in December 2006.

The main recommendations were: The NMP should be revised to be in tune with the current realities of the world economy. Much of the investment needed for

exploration and mining would have to come from the private sector. In order to achieve this, procedure for grant of mineral concessions shall be seamless and security of tenure shall be granted to the concessionaires. Private sector would be the main source of investment in reconnaissance and exploration. Mining should be treated as an economic activity in its own right and not merely as an ancillary activity of the manufacturing industry. For the improvement of infrastructural facilities, particularly transport facilities in mining areas, financial resources available with the government should be leveraged to the maximum extent possible through recourse to public-private partnership arrangements. Induction of foreign technology and participation in exploration and mining shall be encouraged. In exploration, the two-tier system of RP and PL should be replaced by a three-tier system of RP, LAPL and PL. Central government should notify fully prospected ore bodies and they should be disposed of by a transparent tender/auction process. Duration and size of various mineral concessions should be laid down. Security of tenure should be guaranteed from RP through PL to ML. Right to transfer a PL should be explicitly stated in the MMDR Act. PSU's of the Central and State governments to be treated at par with private sector companies for the grant of mineral concessions. The MMDR Act should be amended to give jurisdiction to the Central government to entertain applications from aggrieved parties and take a final decision thereupon in the event of failure of the State government to take a decision within the time frame envisaged in Rule 63 A of MCR 1960. Tribunals to be set up at the Central and State levels to resolve disputes.

Consequent to the report being accepted, the Government unveiled the National Mineral Policy 2008. The essentials of the NMP-2008 are:

- (i) **Regulation of minerals:** Procedures for the grant of mineral concessions shall be transparent and seamless and security of tenure shall be guaranteed to the concessionaires.
- (ii) **Role of the State:** the provisions of the MMDR Act, 1957 and the Rules there under will be reviewed and harmonized with the basic features of the NMP.

There shall be arms length distance between State agencies (PSU's) that mine and those that regulate.

- (iii) **Survey and exploration:** While Government agencies (GSI, MECL and State Directorates of Mining and Geology) will continue to perform the tasks assigned to them, the private sector would in future be the main source of investment in reconnaissance and exploration. An instrument to be known as Large Area Prospecting Licence (LAPL) will be introduced for those minerals which are not bulk minerals and will require high technology for exploration.
- (iv) **Database of mineral resources:** National inventory of mineral resources based on the UNFC system will be maintained by IBM in digitised form comprising both a Resource Inventory and a Tenement Registry.
- (v) **Strategy for Mineral Development:** Conservation of minerals as a positive concept leading to augmentation of reserve base through improvement by scientific mining, beneficiation and utilisation of low grade ores with zero-waste mining as the ultimate goal. Mining contributes to the generation of wealth and creation of employment and should therefore be treated as an economic activity in its own right and not merely treated as an ancillary activity of the manufacturing industry.
- (vi) **Fiscal aspects:** It will be the endeavour of the government within the context of the budget, to design fiscal measures conducive to the promotion of exploration and development.

The Proposed MMDR Act

After the NMP, 2008 was announced, huge expectations were raised regarding liberalisation of the regulatory regime. How and what has transpired since 2008 in the proposals for amendments have been hugely disappointing. In fact, even before the draft act is enacted, the State Governments have moved in the reverse direction:

Rajasthan: (a) Rejected 10 PL and one ML applications of Metal Mining India (P) Ltd. (MMI) after the expiry of their RPs / PLs in 2008 – although they reserved the areas in favour of RSMML only on 10.3.10.

(b) Many companies applied for PLs for sulphur/potash deposits whose exploration and exploitation requires huge Investment – again reserved for RSMML which do not have any financial/technical capability.

Tamil Nadu: No RP/PL was granted to Premier Nickel Mines Ltd. on the pretext that entire area to be explored under MoU between TAMIN and GSI.

Karnataka: State Government rejected four PLs applied for after expiry of their two RPs in 2006 by Deccan Exploration (P) Ltd. and Geomysore Services (India) Pvt. Ltd. – area reserved for HGML.

Chhattisgarh: Put a condition on Mira Exploration (P) Ltd. after issuing letter of intent for one PL: in the event of any adverse decision of the Committee against grant of ML, State Government will not be responsible and not entertain any claim for expenditure incurred in prospecting.

Gujarat: Entire bauxite/limestone areas reserved for GMDC.

The proposed amendments which in the opinion of the industry are regressive, are:

- (i) Before applying for mineral concessions, a registration process has to be followed, with IBM for major minerals and State Governments for minor minerals (Sec 5).
- (ii) Auction or competitive bidding for deposits where sufficient evidence of promising enhanced mineralisation has been established (Sec. 13).
- (iii) The holder of a mining lease shall in respect of any person or persons holding occupation or usufruct or traditional rights is liable to pay compensation; Pay 26% net profit or a sum equivalent to royalty paid during the previous year, whichever is more; provide employment or other assistance in accordance with the Rehabilitation and Resettlement Policy of the State. Licence fees and security deposit amounts will make prospecting and mining unattractive.
- (iv) Penalties for legal miners are draconian which can be: (Sec. 52) Imprisonment up to 3 years or Fine up to Rs. 25,000 per hectare or part or both of the above. Penalty for illegal miners is recovery of mineral + cost of recovery + rent, royalty or tax for the period of occupation + penalty up to 10 times

the price of the mineral recovered + possibility of seizure of equipment and vehicles used in extracting or transporting such mineral. Therefore, one gets an impression that it is better to do illegal mining and get away, with the payment of penalties than to do legal mining which can lead to imprisonment!

Related Factors

Foreign Direct Investment and Raising Funds for Prospecting: In the first 46 years after independence, FDI was restricted in the mineral sector (as in other sectors) to companies with less than 40 per cent foreign holding. With the NMP 1993, FDI was allowed up to 50 per cent with no limit on captive mines. Additional FDI could also be allowed on a case-by-case basis. All FDI proposal required clearance by the Foreign Investment Promotion Board (FIPB). In 1997, FDI up to 50 per cent was taken out of the purview of the FIPB and put on automatic approval route. In 2000, FDI up to 74 per cent under the automatic route was allowed only for exploration and mining of diamonds and precious stones. It was only in 2006 that the mining sector was opened up to 100 per cent FDI. Detailed exploration is a specialized job done by exploration companies, popularly known as junior exploration companies. Their exploration expertise is in most cases linked to a particular mineral or group of minerals. For exploration jobs, they bank on venture capital or hedge funds. Mineral rich countries such as US, Canada, Australia, Brazil, South Africa, Chile, Mexico etc. do

not want 'to spend' tax payers money on the risky venture like exploration. These countries therefore encourage these private companies to undertake detailed exploration job by providing various incentives and security of tenure besides priority in grant of concessions as well as freedom to sell. An idea of the exploration expenditure incurred by various companies world-wide in the last four years, and on which mineral/metal can be observed from Table 1.

The minerals/metals with which India is vitally concerned now and will be in future such as gold, lead/zinc, copper, nickel, PGMs, diamond, etc. have not yet been fully developed or their potential realized because of lack of state-of-the-art exploration technologies, high risk and size of the capital required being not available in India so far. A large number of the deposits discovered so far are chance discoveries.

Private Sector should be Engine of Growth: State PSUs should act as a catalytic agent and take role of promoters rather than engage themselves in mining.

Value Addition

Value addition requirement is imposed by State Governments when they want the concessionaire to ensure that the industrial unit that uses the mineral from the allocated mine is set up within the boundaries of the State in which the mine is located. This condition is being used by Orissa, Jharkhand, Chattisgarh and Karnataka States as a precondition to the grant of mineral concession. This, in addition to the delays caused by statutory and procedural

Table 1

Year	2006	2007	2008	2009
Companies Involved	1624	1821	1912	1846
Amount spent US \$ billion	7.13	9.99	12.6	7.32
% Increase/decrease over last year	45.50	40.00	26.0	-40.00
Commodity Gold	3.21 (45%)	4.10 (41%)	4.914 (39%)	3.51 (48%)
Base Metals	2.28 (32%)	3.60 (36%)	5.04 (40%)	2.64 (36%)
Diamond	0.86 (12%)	1.00 (10%)	1.008 (0.8%)	0.36 (05%)
PGM	0.21(0.3%)	0.30 (3%)	0.378 (03%)	0.15 (02%)
Other Metals	0.57 (8%)	1.00 (10%)	1.26 (10%)	0.66 (09%)
TOTAL	7.13(100%)	9.99 (100%)	12.60 (100%)	7.32 (100%)

bottlenecks has had a most damaging effect on attracting investments. World over the mining industry is developed, controlled and run by stand-alone prospectors and miners. However, setting up of an industry depends on a host of factors of which availability of the main raw material is only one. The net result could be that neither the mining operation fructifies nor does the industry come up. It must be remembered that mining is a huge generator of employment and that too generally in backward or tribal areas. Further, mining creates value when it converts what was just earth to ore. Thereafter, a certain amount of value addition takes place when it is prepared for the market due to sorting, sizing, blending, beneficiation etc. So, the Government must recognise that mining is an industry on a stand-alone basis and not just an appendage to a downstream activity.

Captive Mining

Captive mining of iron ore refers to the allocation of iron ore mines to steel makers so that they can extract iron ore according to the needs of the steel unit. The argument that the iron ore bodies should be reserved for steel makers is that it is a limited resource. The current law does not make investment in industry (based on a mineral) a necessary condition for grant of a ML nor does it mandate any outright preference to be given to metal producers. It does, however, envisage that investment in industry should be one of the factors influencing the decision to grant a ML when one among multiple applications is to be selected.

Captive mining is a concept peculiar to India. Due to historical reasons, it started with Tata Steel followed by Steel Authority of India. Today, every steel producer wants a mine and States are not issuing ML's unless the applicant agrees to put up a steel plant.

Worldwide, Western Europe, Japan and South Korea became major steel producing centres without captive mines, whereas, Brazil and Australia are major producers of iron ore without being significant producers of steel. The conclusion is that it is the market that determines production of steel and not availability of iron ore.

Infrastructure

The neglect of infrastructure has been a major deterrent to investments in general and mining in particular. While State governments have been on a spree to sign MOU's for investment, no attention has been paid to roads, railways, and ports. To take the case of steel, it does not seem to have dawned on the State governments that for every tonne of steel produced, five and a half tonnes of material have to be moved – three and a half tonnes of raw materials, one tonne of steel itself and about a tonne of solid wastes.

Restrictions on Exports

The steel industry with the active support of the steel ministry is vociferously lobbying for a complete ban on iron ore exports. The reason put forward is that India is running out of iron ore. Table 2 would clarify the situation.

However, there has been hardly any systematic exploration in India. Further, the threshold value has been reduced from 55% to 45% Fe. Moreover, resource estimation

has been confined to 50 m depth and that too with sparse interval of drilling.

Indian Resources are one of the Largest in the World

- In 1980s Indian resources are larger than those identified in Australia and Brazil.
- Exploration limited to stand-alone mines and that too started in last 7-8 years because of Chinese demand forced miners to intensify exploration to increase production.
- NMDC has recently reported additional resources of 611 mt at its mines in Chattisgarh. (Present reserves 922 mt in both Chattisgarh and Karnataka i.e. 66% increase).

Conclusion

From the foregoing paragraphs it may be seen that the trend of liberalisation ushered in by the amendments to the MMDR Act in 1994 and 1999 which was further re-inforced by the NMP 2008, have been sought to be reversed in the proposed MMDR Act. This does not auger well for the future of the mineral industry.

Table 2

Demand 2009-10	m/t	Production and Supply 2009-10	m/t	
Captive Mines of SAIL & TISCO	32.13	Production of Iron Ore	226.00	
Supplies from Non-Captive Stand-alone mines		Mine Head stocks as on 2009 (IBM Nagpur)	73.00	
		Total	299.00	
RINL	5.13	Supplies to Steel Mills	102.00	
Other Major products	21.41	Exports	117.37	
Sponge iron units	33.18	Surplus available include	79.63	
Miscellaneous	10.00			
	101.85			
Say	102.00			
* Note: For producing one tonne of crude steel/sponge iron, 1.6 tonnes of iron ore consumption has been assumed.		Conclusion: No Shortage of iron ore for domestic steel industry.		
Iron Ore Resources 1980-2005 (Qty: million tonnes)				
Grade	Resources as on			
	1.1.1980	1.4.1990	1.4.2000	1.4.2005
Haematite	11469	12197(+728)	11426(-771)	14630(+3204)
Magnetic	6095	10590(+4495)	10682(+92)	10619(-63)
TOTAL	17564	22787(+5223)	22108(-629)	25249(+3141)

Source: Indian Bureau of Mines, Nagpur

Symptoms of disease

- While the provisions of Rule 63 A of MCR 1960 states that applications for RP, PL and ML should be disposed of in 6, 9 and 12 months respectively, in actual fact even RP's have not been disposed off in years.
- No new metalliferous mine has come

up in the last twenty years.

- Negligible amount of FDI has flowed into the mining sector

What the industry represented by the Federation of Indian Mineral Industries (FIMI) would desire are the following:

- Speedy clearance of applications for mineral concessions.

- Transparency in dealing with applications.
- Introduce seamless migration from RP/LAPL to PL to ML
- Pay attention to infrastructure, particularly, ports and railways.
- Treat investors, entrepreneurs and mine operators as partners.